

Department of the Treasury

# Contracting Officer's Technical Representatives



## HANDBOOK

SECOND EDITION

September 1997

## FOREWORD

The Contracting Officer's Technical Representative (COTR) is a key player in affecting the outcome of the contract administration process. In fact, *the COTR is often an integral factor in whether or not a contract is successful*. Frequently, the main focus in the procurement cycle is on contract award, thus undermining the vital role of post award administration. As a COTR, you must ensure that the Treasury mission is met; contractors fulfill contract terms and conditions; and taxpayer dollars are prudently spent. Public service is a public trust. Contracting Officers and COTRs must balance public trust responsibilities with the demands of timely program accomplishment.

How do we maximize the likelihood of success? Understanding the different roles and responsibilities of Contracting Officers and COTRs; working together as a team when those roles and responsibilities overlap; understanding the rules; and finding innovative solutions to problems within those rules. A trained workforce is also essential.

The purpose of this handbook is to provide guidelines that will assist you in performing your role throughout the procurement process. Read this handbook carefully and refer to it often. If you have any questions about material in this handbook, please ask your supporting Contracting Officer. Remember, successful contract administration can only happen through the combined efforts of the procurement, program, and financial offices. It is imperative that you understand your role and then accomplish that role to the best of your ability.

Robert A. Welch  
Procurement Executive

**DEPARTMENT OF THE TREASURY  
BUREAU CHIEF PROCUREMENT OFFICERS**

Should you have difficulties which cannot be resolved by your Contracting Officer, help is just a phone call away. The following is a list of the Bureau Chief Procurement Officers, along with their telephone numbers. Do not hesitate to contact the appropriate person if you feel that you need their assistance.

Wesley Hawley	202-622-1300
Director, Procurement Services Division	
1310 G Street, NW	
Suite 200E	
Washington, DC 20220	

John Krieger	202-927-8820
Chief, Acquisition Division	
Bureau of Alcohol, Tobacco & Firearms	
Room 3920	
650 Massachusetts Avenue, NW	
Washington, DC 20226	

Richard A. Miller	202-874-5040
Associate Director for Acquisition Services	
Comptroller of the Currency	
250 E St., SW, 4th Floor	
Washington, DC 20219	

Theodore K. Kasna	202-927-0990
Director, Procurement Division	
U.S. Customs Service	
Room 4216	
1301 Constitution Avenue, NW	
Washington, DC 20229	

Carol L. Seegars	202-874-2534
Chief, Office of Procurement	
Bureau of Engraving & Printing	
Room 705A	
14th & C Streets, SW	
Washington, DC 20228	

John T. Richardson	912-267-2243
Chief, Procurement Branch	
Federal Law Enforcement Training Center	
Building #28	
Glynco, GA 31524	

John M. Connors  
Director, Logistics Management Division  
Financial Management Service  
Liberty Center Building  
Room 428A  
401 14th Street, SW  
Washington, DC 20227

202-874-6910

Gregory D. Rothwell  
Assistant Commissioner (Procurement)  
Internal Revenue Service  
National Office, Room 3113  
1111 Constitution Avenue, NW  
Washington, DC 20224

202-622-8480  
202-283-1200

Joan Tuenge  
Acting Assistant Director for Procurement  
U.S. Mint  
633 3rd Street, NW, Room 200  
Washington, DC 20220

202-874-6304

Orlando Yaconis  
Director, Division of Procurement  
Bureau of the Public Debt  
200 3rd Street, Room 207  
Parkersburg, WV 26101-5312

304-480-6465

Lawrence A. Schlosser  
Chief, Procurement Branch  
Office of Thrift Supervision  
1700 G St. NW  
Washington, DC 20552

202-906-6193

Nancy A. Nifong-Kerlin  
Chief, Procurement Division  
U.S. Secret Service, Room 730  
1310 L Street, NW  
Washington, DC 20223

202-435-6940

*The Department of the Treasury is interested in any suggestions that could improve the usefulness of this handbook. Please forward any comments to:*

***DEPARTMENT OF THE TREASURY  
OFFICE OF PROCUREMENT  
1500 PENNSYLVANIA AVENUE, NW  
ROOM 6100, ANNEX  
WASHINGTON, DC 20220***

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# PART I. INTRODUCTION

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## ***GENERAL OVERVIEW***

This handbook is issued by the Office of Procurement to provide Department of the Treasury personnel who are designated as Contracting Officer's Technical Representatives (COTRs) with a source of basic guidance for monitoring contractor performance and for performing other contract administration duties.

The handbook contains five Parts. Following the Introduction, Part II explains fundamentals of the acquisition process necessary for a basic understanding of contracting. Part III describes the process of turning a program requirement into a successful contract. Part IV covers the crucial phase of post award administration, which ensures that the contract is well and faithfully executed by both parties (i.e., the Government and the contractor), and that the Government's needs are met. The narrative concludes with Part V, which discusses standards of conduct. The final portions of the handbook are some glossaries of terms and various attachments which provide formats.

The handbook establishes standards, describes the assignment of responsibilities, and prescribes procedures for evaluating contract proposals, negotiating, awarding, and administering Treasury contracts. It is designed to provide COTRs with a convenient source of basic information about their role in administering and monitoring contracts of all types. It delineates the duties which the Contracting Officer may require of the COTR, and explains which functions are

the responsibility of the COTR and which are those of the Contracting Officer.

The direction provided in the handbook is based on the authorities implemented by the Federal Acquisition Regulation (FAR) and supplemented by Treasury Acquisition/Procurement Regulation (TAPR). If any inconsistencies are found, the FAR and supplements take precedence over this handbook.

## ***THE ROLE OF THE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE***

Once a decision is made to acquire supplies or services through the contracting process, a partnership is created between the COTR and the Contracting Officer. This partnership is essential to establishing and achieving contract objectives because these two officials are responsible for ensuring that the contracting process is successful.

Contracting Officers and COTRs have both separate and mutual responsibilities, with lead responsibility shifting from one to the other during the various stages of the contracting process. During the pre-solicitation phase, the COTR has the lead and the Contracting Officer operates in an advisory capacity. However, as this phase ends and the solicitation and award phase begins, the lead responsibility shifts to the Contracting Officer, with the COTR acting largely as an advisor. During post award administration, the COTR assumes lead responsibility for some functions, and the Contracting Officer



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for others.

Contracting Officers sign the contract on behalf of the Government and bear the legal responsibility for the contract. They alone can enter into, terminate, or change a contractual commitment on behalf of the Government.

COTRs support the Contracting Officer. As a team, they must ensure that program requirements are clearly defined and that the contract is designed to meet them.

Together, they are responsible for ensuring that competitive sources are solicited, evaluated, and selected; and that the price the Government pays for the supplies and service it acquires is fair and reasonable. They must establish quality standards and performance measures, delivery requirements, and make sure that these are met. COTRs monitor compliance with contract terms and conditions, and must report any deviation to the Contracting Officer.

The principal role of the COTR is to furnish technical direction, monitor contract performance, and maintain an arm's-length relationship with the contractor. The word "direction" is misleading to many COTRs. First, it *does not* mean "to control, to order or command, or to take authoritative charge." Technical direction means "*to guide, to show or indicate the way, to conduct.*"

One of the primary functions of the COTR involves the issuance of technical guidance to the contractor. Performance work

statements are often inexact, resulting in the need for technical instructions as the work progresses. The COTR must ensure that the contract is not converted to a personal service contract through the use of technical directions.

The COTR should act as the focal point for all correspondence and discussions with the contractor concerning technical direction and issue all technical direction that provides specific details and milestones. The COTR is responsible for ensuring that all technical directions are reduced to writing to avoid misunderstandings and disagreements, to avoid unnecessary costs, and generally to maintain proper control of the contract.

The COTR plays a critical role in influencing the outcome of the contract administration process. The technical administration of Government contracts is an essential activity. The primary role of the COTR is to provide technical clarification and to monitor contract performance, thus ensuring the Government pays only for the services, materials, and travel authorized and delivered under the contract.

### *Designation of COTRs*

The Contracting Officer's Technical Representative (COTR) is nominated in writing by the requirements generating organization (**see SAMPLE, Attachment A**); designated in writing in the contract schedule at the time of contract award; and notified by letter (**see SAMPLE, Attachment B**) signed by the Contracting Officer and in turn acknowledged by the

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COTR signing and returning a copy of the notification/designation letter. **This letter should be tailored specifically for each contract**, and a copy sent to the contractor. The Contracting Officer should carefully review the standard duties and any special duties that will be required.

Large dollar or complex contracts require increased monitoring. Factors such as the contract type, the supply or service being procured, and the COTR's level of experience influence the degree of involvement needed for effective contract administration. The notification/designation letter should reflect this. The designation does not change or supersede the established line of authority and/or responsibility of an organization. If the COTR changes, a new designation letter must be completed, and the contract modified (**See SAMPLE, Attachment C**). Additionally, all COTRs must receive a Certification of Appointment (**Attachment D**). A copy of the notification/designation letter, certification of the COTR's training (minimal requirements are: a basic 24 hour COTR course and a 4-hour procurement ethics course), and Certificate of Appointment, shall be maintained in the contract file.

Bureaus may designate a COTR by other titles in accordance with their own practices, e.g., Project Coordinator, Project Officer.

A substitute or alternative COTR may be designated to fill in for the primary COTR. Due to the scope or technical complexity of some contracts, "sub-COTRs" may also be designated for specific aspects of the

contract. If sub-COTRs are necessary, they will be appointed by the Contracting Officer, with their authorities and duties included in the letter of appointment of the COTR. Sub-COTRs will be the responsibility of, and responsive to, the COTR.

### *COTR Certification Program*

The COTR Certification Program established by the Assistant Secretary for Management in 1989, set the following minimum standards for Treasury COTRs: 24 hours basic COTR training, 4 hours of procurement ethics, training an 8-hour refresher course after 3 years, and signing of the Procurement Integrity Certification for Procurement Officials required by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The Procurement Integrity Certification for Procurement Officials is no longer required.

Even though 24 hours is the minimum training requirement, many Contracting Officers prefer the 40 hour COTR course, in part because of the vast changes in Federal procurement since 1989, and due to the increased number of high-dollar acquisitions. The Treasury Acquisition Institute (TAI) offers a comprehensive 40 hour course (including 4 hours of ethics training) with emphasis on Treasury specific contracting.

Contact your procurement office for a schedule of TAI courses or more information on training requirements.

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### ***RESPONSIBILITIES OF THE COTR***

Subject to program policy and operational procedures, individuals designated by the Contracting Officer as COTRs are assigned specific responsibilities including, but not limited to, the following:

(1) Participating in acquisition planning and market research to promote the acquisition of commercial items and full and open competition;

(2) Developing the contract specification or work statement to promote full and open competition, including restrictions only as necessary to satisfy the minimum, and stating requirements in terms of functions to be performed, performance required, or essential physical characteristics;

(3) Identifying and addressing issues such as: a. customary commercial practices for commercial item acquisitions, b. systems life support and maintenance requirements, c. compatibility limitations, and d. environmental and energy conservation objectives;

(4) Reviewing proposed actions for consideration of sources such as excess from other agencies, contracts available for use from other agencies, the Committee for Purchase From People Who Are Blind or Severely Disabled, Federal Prison Industries, and small business and 8(a) set-asides, and other socioeconomic program goals;

(5) Developing an independent Government estimate of the cost or value of

purchase;

(6) Coordinating with the program office actions relating to funding, delivery or performance schedules, and changes in scope of work;

(7) Developing source selection evaluation factors including past performance and assisting with the review of the solicitation prior to issuance;

(8) Assisting in preaward surveys, technical evaluation of offers, and supporting the Contracting Officer in post award debriefings of offerors;

(9) Requesting the Contracting Officer to authorize Government-furnished property and, when requested by the Contracting Officer, furnishing disposition advice on Government-furnished property or contractor-acquired property;

(10) Coordinating with facility maintenance, security, and administrative offices actions such as the use of Government -furnished property, background investigations, facility and system security clearances for contractor employees, delivery and on-site work performance schedules;

(11) Controlling all Government technical interfaces with the contractor;

(12) Assuring that appropriate action is taken on technical correspondence pertaining to the contract and maintaining adequate files;

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(13) Assuring that changes in work and any resulting effects on delivery schedules are executed by contract modifications by the Contracting Officer before the contractor proceeds with the changes;

(14) Assuring prompt review of draft and final reports so distribution of the reports can be made within the specified completion date of the contract, and assuring prompt inspection and acceptance or rejection of other deliverable items or services;

(15) Informing the Contracting Officer immediately of any indications that a contractor is behind schedule and coordinating corrective actions with the Contracting Officer;

(16) Providing suggestions to the Contracting Officer for improvements and changes that would facilitate better work performance or streamline processes to the advantage of the Government and/or the contractor;

(17) Furnishing to the Contracting Officer a copy of Government-contractor conference reports and correspondence, and coordinating with the Contracting Officer on the content of any contractually significant correspondence addressed to the contractor, in order to prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim. All correspondence addressed to the contractor must be signed by the Contracting Officer;

(18) Monitoring and coordinating financial management controls with budget and paying offices;

(19) Furnishing the Contracting Officer a notice of satisfactory or unsatisfactory completion; of delivery or performance of a contract, purchase order, delivery order, or any modification thereto **(see SAMPLE, Attachment E and Part IV, INSPECTION AND ACCEPTANCE RESPONSIBILITIES)**;

(20) Tracking and reporting equipment and system downtime to the Contracting Officer;

(21) Reporting promptly and directly to the Inspector General or Agency Ethics Officer, any suspected procurement frauds, bribery, conflicts of interest, and other improper conduct;

(22) Notifying the Contracting Officer of possible conflicts of interest;

(23) Reviewing and submitting recommendations to the Contracting Officer on subcontracts, considering the privity of contract that exists between the prime contractor and subcontractor;

(24) Recommending to the Contracting Officer approval/disapproval of the contractor's requests for public release of information regarding work being performed under the contract;

(25) Notifying the Contracting Officer of inventions by the contractor

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during the performance of the contract;

(26) Furnishing the Contracting Officer a formal request for termination, when required;

(27) Evaluating the contractor's request for travel;

(28) Reviewing the contractor's invoices to ensure that they reflect accurately the work completed in accordance with the requirements of the contract and certifying acceptance;

(29) Evaluating contractor performance as directed by the Contracting Officer (**See SAMPLE, Attachment F and Part IV, CONTRACTOR PERFORMANCE EVALUATION**), and providing support to the Contracting Officer and final reviewing official in subsequent issues concerning the contractor's performance; and

(30) Notifying the security office at contract completion for the timely cancellation of facility security clearances, collection of security badges, and cancellation of system access.

### ***WHAT THE COTR IS PROHIBITED FROM DOING***

The COTR is prohibited from performing or being responsible for the following. This list is not meant to be all inclusive but rather a list of the major areas of focus.

(1) Making commitments or promises (oral or written) to any contractor relating to the award of a contract;

(2) Writing contract requirements around the product or capacity of one source;

(3) Soliciting proposals;

(4) Modifying any of the stated terms of the contract;

(5) Issuing instructions (oral or written) to a contractor to start or stop work;

(6) Approving items of cost not specifically authorized by the contract;

(7) Directing changes (oral or written);

(8) Signing supplemental agreements;

(9) Negotiating;

(10) Taking any action with respect to termination, except to notify the Contracting Officer that the action is desired and to assist with the process as requested;

(11) Authorizing delivery or disposition of Government-furnished property;

(12) Giving guidance to a contractor, either orally or in writing, which might be interpreted as a change in scope or

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terms of the contract;

(13) Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement; and

(14) Directing a contractor to begin work prior to contract award date.

Violation of the foregoing may give the appearance that Treasury is not acting in good faith. Commitments made to a contractor by other than duly appointed Contracting Officers can result in formal protests by other companies, appeals or disputes, embarrassment to the Department and bureau involved, criticism by the General Accounting Office, and possible monetary loss to the COTR and the firm involved.

### **REGULATIONS**

The Federal acquisition process is governed by a system of regulations and policy issuances. The primary document is the Federal Acquisition Regulation (FAR), which was established for the codification and publication of uniform policies and procedures. The Treasury Acquisition/Procurement Regulation (TAPR) is the document that implements and supplements the FAR within the Department of the Treasury.

The Information Technology Management Reform Act of 1996 (ITMRA), now known as the Clinger-Cohen Act, of 1996 (Public

Law 104-106) repealed the Brooks Act and took away the General Services Administration's (GSA) responsibility of overseeing information technology (IT) acquisitions. Authority is now vested in the Office of Management and Budget (OMB). Additionally, the Act authorizes individual agencies to conduct IT procurements and establish agency Chief Information Officers (CIO) to oversee IT purchasing. Each agency head has named a CIO who is responsible for coordinating and directing IT policy and procurement. Treasury bureaus also have their own CIOs.

Clinger-Cohen mandates integrated planning, budgeting, and contracting of IT resources. Investments will be closely scrutinized, and performance goals will be established and closely monitored, in the face of shrinking budgets. The former Federal Information Resource Management Regulation (FIRM) is obsolete although some parts have been incorporated into the FAR. Additional guidance from OMB and GSA is anticipated.

The Federal Property Management Regulation (FPMR) also has significant impact on the acquisition process. Issued as Chapter 101 of Title 41, CFR under the authority of the Federal Property and Administrative Services Act of 1949 (P. L. 152, 81st Congress) as amended, and other statutes, it prescribes policies and procedures governing management of property and records. Containing eight Subchapters, its Subchapter E (Supply and Procurement) is pertinent to the acquisition process.

## PART II. ACQUISITION BASICS

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This Part describes the fundamentals of contract law and key basic principles of the Federal acquisition process. Familiarity with these basic concepts will help COTR's fulfill their responsibilities and know when to seek assistance from Contracting Officers when problems arise.

### ***DISTINCTION BETWEEN ACQUISITION AND ASSISTANCE***

Acquisition encompasses the processes the Government employs to obtain supplies or services through contracts, including commercial items acquisitions, simplified acquisitions, and basic ordering agreements. The acquisition process almost always results in a contract, which flows from an offer (i.e., a bid or a proposal) made by an bidder/offeror, and an acceptance of that offer by a Contracting Officer on behalf of the Government.

Assistance describes the process by which the Government transfers money, property, services, or anything else of value to recipients to accomplish a public purpose of support authorized by a Federal statute. The instruments used are grants and cooperative agreements. These instruments usually result from an application being made by an applicant and an approval of that application by a Grants Officer on behalf of the Government. The Department of the Treasury does not have a significant assistance program so it will not be addressed in this handbook.

### ***THE CONTRACT AS A LEGAL OBLIGATION***

#### ***Nature of a Contract***

A contract is a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. (See Glossary for complete FAR definition.) In nearly all Government contracts, the contractor, the "seller," is obligated by the contract to provide supplies or services. The other party is the Government which, as the "buyer," is obligated to pay for those supplies or services.

All contracts contain five elements:

- o An Offer (a bid or proposal by an offeror that a contract be entered into);
- o An Acceptance (the expression by the offeree of his/her assent to the offer and communication of that assent to the offeror);
- o For Mutual Consideration (something of value in the eyes of the law exchanged by the parties to bind the agreement);
- o Between Competent Parties;
- o For a Lawful Purpose.

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In Government contracting, the bid or proposal is the offer. It is made by an offeror seeking to enter into a contract with the Government. Invitations for Bid (IFB) or Requests for Proposal (RFP) issued by the Government are solicitations, informational documents that express the Government's needs to the community of potential offerors.

Oral or written Requests for Quotation (RFQ), to which suppliers may submit a quotation, may be issued for simplified acquisitions when not soliciting using the Federal Acquisition Computer Network (FACNET). A purchase order issued by the Government is the offer and is binding only when the supplier accepts or begins performance.

When the Government, after bid opening or proposal review and negotiation, chooses one bidder/offeror to contract with, it performs the act of acceptance by award, usually by signing the contractual instrument. The consideration in Government contracts is typically the delivery of supplies or services by the contractor and payment by the Government. The contract must also have a lawful purpose--it cannot violate a statute, for example--and contracts must be entered into by mentally and legally competent parties for the contract to be valid.

Contracts must have certainty of terms and conditions to be enforceable. Since courts have to rely on the meaning of the language of a contract to enforce it, this language must be clear and certain. Specifications or work statements, for example, must

communicate clear requirements. Although non-Government contracts may sometimes be oral, Government contracts (including modifications) are always in writing.

### ***Authority to Enter Into Contracts***

In Treasury, as in other Federal agencies, the authority to contract is delegated to certain key officials who, in turn, redelegate this authority to Contracting Officers. Although Contracting Officers, in turn, may redelegate certain limited authority to administer parts of the contract, they are the only persons authorized to enter into or modify contracts on behalf of Treasury.

As the United States' agents for the acquisition of supplies and services, Contracting Officers have an important stewardship role in the acquisition process. They are responsible to ensure that contractors live up to their contracted obligations. COTRs must ensure that they do nothing to infringe upon unique Contracting Officer responsibilities. COTRs may be given certain limited authority to act on behalf of the Contracting Officer, particularly in providing technical direction to the contractor. This authority will be discussed in more detail in Part IV (Post Award Administration) of this Handbook. It is important to point out that COTR's cannot obligate the Government or change the terms or conditions of contracts--only the Contracting Officer can do that.

Just as the Government requires agents to act on its behalf, so does the other party to the contract: the contractor. Agents will



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almost always be used by the contractor to enter into and carry out the contract with the Government. One important difference is that only a person with actual authority (by statute, regulation, or contract terms) may bind the Government. A contractor's employee, though, may have apparent authority, and thus may be considered to be an agent and bind the contractor, even in the absence of actual authority. Because of this, contractors usually try to limit and specify those who are its authorized agents, and Contracting Officers will usually verify that authority so as to avoid any possible future legal complications that might arise when dealing with an individual who has only apparent authority.

### ***DIMENSIONS OF ACQUISITION***

Federal procurement laws and policies have streamlined acquisition methods, emphasizing innovation and the use of sound business judgment, and establishing new preferences.

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives.

To that end, the Federal Acquisition Streamlining Act of 1994 (FASA) established the preference for the acquisition of commercial or nondevelopmental items, outlines the market research required to determine the availability of such items, and requires consideration of contractor past

performance for source selection purposes.

OMB policies emphasize performance based contracting for services, to ensure that the appropriate performance quality level is achieved, and that payment is made only for services which meet contract standards.

Full and open competition in Federal contracting, set forth in the 1984 Competition in Contracting Act (CICA), is the norm in Federal contracting. Contracting Officers are required to promote and provide for full and open competition through procedures best suited to the circumstances of the contract action. Decisions to award without full and open competition requires careful justification and high-level approval.

Maximum competition is not only mandatory from a public policy perspective, but it is also desirable because, if properly administered, competition in contracting will result in the timely delivery to the Government of quality supplies and services at the most reasonable cost. In short, it will usually provide the Government with the best deal.

Acquisition can be viewed in four dimensions: commercial versus developmental requirements, the degree of competition, the method of solicitation, and the type of contract ultimately awarded. These four dimensions are interrelated and interactive.

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### **COMMERCIAL ITEM ACQUISITIONS**

The preference for the acquisition of commercial items (CI) is implemented in FAR Part 12. The policies and procedures are unique to Federal acquisitions and were established to more closely resemble those of the commercial marketplace and to encourage the acquisition of commercial items and components.

Contracting Officers shall use CI policies in conjunction with the solicitation, evaluation, and award procedures for simplified acquisitions, sealed bidding, and negotiated contracts in Parts 13, 14, and 15.

FAR Part 10 outlines the market research required to plan and prepare for an acquisition. This is especially important for CI acquisitions, to answer these questions:

- are commercial items available to meet the Government's needs;
- what are the customary conditions for sales, warranties, etc.;
- what are the capabilities of potential suppliers; and
- what are the size and status of potential sources?

The program office and COTR, working closely with the Contracting Officer, have an integral role in gathering this information.

The Standard Form 1449 Solicitation/Contract/Order for Commercial Items is used with CI specific provisions and clauses. A streamlined solicitation option for CI acquisitions allows the solicitation and

synopsis to be combined into one document. The notice/requirement is published in the Commerce Business Daily with a minimum response time of 15 days. A written solicitation is not issued. The use of this option, as appropriate, greatly simplifies the acquisition process and saves considerable time and resources.

The streamlined process for evaluating CI offers is designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors.

In the CI provision "Instructions to Offerors," the Government expresses to offerors the intent to award a contract without discussions. This alerts the offerors to submit their best offer with the initial proposal; there may be no opportunity to improve the proposal or submit a best and final offer.

### **COMPETITION IN CONTRACTING**

It is in the Government's best interests to maximize the use of competition in its acquisitions. Competition is a marketplace condition under which both the buyer and the seller expect that the buyer will have alternate sources of supply. This may be reflected in technical or price terms, or a combination thereof.

- o Technical competition, for example, is applicable to the acquisition of research and development, and results in the selection of an offeror whose proposal

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indicates a high degree of technical capability. While cost/price is always a factor, often the overriding consideration is the selection of an offeror who has a technically superior proposal.

- o Price competition implies that all responsible, responsive offerors can successfully accomplish the required tasks and the only differentiating factor is price.

The 1984 Competition in Contracting Act (CICA) made competition in Federal contracting the "law of the land," holds Contracting Officers statutorily responsible for maximizing competition, and strictly defines (and thereby limits) the use of less than fully competitive procedures.

CICA provides for three levels of competition:

- o full and open competition:
- o full and open competition after exclusions of sources; and
- o other than full and open competition.

Full and open competition is the most desirable and favored form of contracting. This category includes contracting through:

- o sealed bids;
- o competitive proposals; and
- o other related procedures.

Exclusion of sources is used for the set-aside of acquisitions for small businesses and 8(a) businesses (businesses eligible under Section 8(a) of the Small Business Act, for contracts with limited or no competition). Approval authority for use of a set-aside resides with the Contracting Officer.

When circumstances make it impossible or undesirable to obtain full and open competition, the COTR shall provide the Contracting Officer sufficient information to justify the award of a contract on a sole-source basis or with limited competition. The format for submission of this information is contained in Part 1053 of the Treasury Acquisition/Procurement Regulation. Clear and convincing evidence must be provided on TDF 76-01.6, "Justification for Other than Full and Open Competition" (JOFOC). **(See Attachment G)**. To justify the use of such action in writing, certify the accuracy and completeness of the justification, and obtain the approval(s) required by TAPR 1006.303, according to the detailed instructions on the form.

### ***METHODS OF SOLICITATION***

The third dimension of acquisition involves the method of solicitation, which subsequently determines the processing of requirements through to award. The solicitation techniques are: Invitation for Bids for sealed bidding, Requests for Proposals and quotations for contracting by negotiation (including simplified acquisitions), and commercial item

## PART II. ACQUISITION BASICS

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solicitations including a combined synopsis/solicitation procedure.

### ***Sealed Bidding***

Sealed bidding is an objective, formal method of solicitation based entirely on competition. An Invitation for Bid (IFB) is prepared describing the Government's requirements clearly, accurately, and completely.

The IFB is then publicized (synopsized) in the Commerce Business Daily, (among other methods) in sufficient time to enable prospective bidders to prepare and submit bids. The bids are publicly opened at a predetermined time and place, and the amount of each bid is publicly announced.

The Government evaluates each bid, but holds no discussions with the bidders. An award is made to the responsible and responsive bidder whose bid is most advantageous to the Government, considering only price and price-related factors. A "responsive" bidder is one whose bid conforms to the terms and conditions of the solicitation. A "responsible" bidder is one with adequate financial resources to perform the prospective contract; is able to meet the required delivery schedule; has a satisfactory record of performance; has a satisfactory record of integrity and business ethics; has necessary organization, business and financial systems (or the ability to obtain them) to handle the prospective contract; and has the required production, construction, and technical equipment and facilities (or the ability to

obtain them) to perform the work.

### ***Two-Step Sealed Bidding***

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. The objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items.

(a) Step one consists of the requests for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined above.

(b) Step two involves the submission of sealed, priced bids by those who submitted acceptable technical proposals in step one. Award then proceeds as with the regular sealed bidding procedure.

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### *Contracting by Negotiation*

Most acquisitions in which COTRs will be involved are made through the process of contracting by negotiation.

Contracting by negotiation includes several discrete steps. After the requirement is determined and the acquisition is planned according to Treasury procedures, an advance notice or synopsis must be published in Commerce Business Daily to inform the contracting community of the forthcoming solicitation.

Solicitations for negotiated contracts should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. To that end, quality shall be addressed in every source selection with the use of non-cost evaluation factors such as past performance, technical excellence, and management capability.

Past performance is mandatory for source selection in all competitively awarded contracts estimated to exceed \$1,000,000.

Contracts awarded to Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and the Federal Prison Industries in accordance with FAR Subparts 8.6 and 8.7, are exempt from the mandatory past performance requirement.

A Request for Proposal (RFP) is prepared and transmitted to a number of sources, some of whom are identified from an

established list of offerors or through market research, those recommended by the Small Business Specialist, and others who responded to the Commerce Business Daily synopsis or other advertising.

Offerors then prepare and submit proposals in response to the RFP. These proposals normally consist of a technical proposal and a business or cost proposal. Technical proposals are evaluated against a set of technical evaluation factors that was included in the RFP. The cost proposals are evaluated to determine whether the proposed costs and prices are reasonable, and to determine the offerors' understanding of the work and their ability to perform the contract. Proposals will also be evaluated against any other criteria specified in the RFP.

The Contracting Officer next determines which proposals are in the competitive range. The determination is made on the basis of cost or price, and evaluation factors.

The next step is the conduct of oral and/or written discussions. Although this is not a mandatory step, it is the usual one. During discussions, the Contracting Officer attempts to resolve uncertainties concerning any part of the proposal and to provide the offerors with reasonable opportunity to revise their proposal as a result of the discussion. After discussions are concluded, the Contracting Officer shall request best and final offers (BAFO) from all offerors in the competitive range, allowing adequate time for submission of revised proposals.

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The Contracting Officer, often with the assistance of the COTR or a technical team, will evaluate the BAFOs. The Contracting Officer will select or, in complex acquisitions requiring more formal procedures, identify and recommend to the designated Source Selection Authority (SSA), the source whose proposal is most advantageous to the Government, considering only price and the other factors included in the solicitation, and proceed with award.

After receipt of best and final offers, the Contracting Officer should not reopen discussion unless it is clearly in the Government's interest to do.

Any type of contract may be used when contracting by negotiation. The foregoing steps constitute a brief overview of the negotiation process. This handbook will discuss each step in more detail in Part III.

Another method of solicitation is the issuance of a Request for Quotation (RFQ). An RFQ may be used for any proposed contract action, but it is typically used only in connection with the acquisition of supplies where the total purchase amount is less than the simplified acquisition threshold or for urgent requirements. A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract. It is informational in character and may be used when the Government does not intend to award a contract on the basis of a solicitation, but wishes to obtain price, delivery, or other market information for planning purposes.

### ***TYPES OF CONTRACTS***

The Federal Acquisition Regulation, Part 16, provides for two families of contract types: fixed-price and cost-reimbursement. Each family consists of variations on the type, but the essential characteristics within each family are the same.

COTRs need to understand the characteristics of each major contract type because these can significantly affect acquisition planning and contract administration duties. You need to discuss with your Contracting Officer which contract type will be the most appropriate for the supplies or services being procured. Although it is the Contracting Officer's decision as to what type of contract will be used, this can be discussed with contractors.

The contract types differ in two key respects. One difference is the amount of risk placed on the Government and the contractor. The other is the degree of contract management or administration that each type requires by the Government.

### ***Fixed-Price Contracts***

Firm-fixed-price contracts place maximum risk on contractors, and little or no risk on the Government. The contractor has made a commitment in the contract to deliver all it promised in return for the specified consideration. The Government has the right to receive what it contracted for, at the price it promised to pay. If the contractor fails to perform at the contract price, it is liable for default, which can bring severe additional

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costs on the contractor.

Because the risk is high to contractors, their incentive to perform according to the terms and conditions of the contract is quite high. Therefore, the Government's contract monitoring requirements are usually far less than those for cost-reimbursement type contracts.

If firm-fixed-price contracts confer maximum risk on contractors while minimizing Government risk and if they minimize Government monitoring responsibility, why aren't they always used for Federal acquisitions? The main reason is that many Government requirements cannot always be translated into the definable and clear-cut specifications needed for this kind of contract. For an offeror to prepare a realistic bid or proposal on a fixed-price basis, the specification must contain little or no uncertainty. If such specifications are possible, then responsible potential contractors are willing and able to develop a fair and reasonably priced bid or offer, and to assume a reasonable risk.

For commercial items acquisitions, only firm-fixed-price or fixed-price with economic price adjustment contracts are used.

Many of our requirements, however, cannot be specified with the certainty required for fixed-price contracts. In the absence of this certainty, responsible potential contractors have no way of estimating the price of the work with the degree of accuracy needed to assume fixed-price contract risk. Research and development and related requirements

are typical examples of work that may have too much uncertainty attached to them to use fixed-price contracts. If the Government used a fixed-price contract to meet these needs, it could either result in offers from sources that are not responsible or capable of doing the work, or offers that have unreasonably high prices to cover the great potential risk to contractors.

### *Cost-Reimbursement Contracts*

There are several variations of cost-reimbursement contracts, the most common being the cost-plus-fixed-fee contract. This type of contract is used when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of fixed-price type contracts. Rather than guaranteeing to perform all contract terms and conditions at a specified price, the contractor agrees to deliver its "best efforts" to perform the requirements in return for costs incurred and a reasonable profit (fee). This type of contract provides for negotiations of estimated cost and a payment of a fixed dollar fee to the contractor. This fee cannot be changed unless the scope of work in the contract is changed by the parties to the contract.

A cost-plus-award-fee contract provides for a fee consisting of a base amount fixed at the inception of the contract and an award amount that the contractor may earn with exceptional performance. This type of contract may be used when areas such as quality, timeliness, technical ingenuity, and

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cost-effective management are very important. Because the Government determines the amount of the fee based on the contractor's performance, the COTR will play an integral part in closely monitoring the contract and assisting the Contracting Officer with evaluations of performance. A cost-plus-award-fee contract shall not be awarded unless the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost involved.

A cost contract is virtually the same as a cost-plus-fixed-fee contract except that there is no provision for a fee. This type of contract is suitable, therefore, to academic and other nonprofit institutions, whereas the cost-plus-fixed-fee is used in connection with profit-making firms. Every cost-reimbursement type contract contains a Limitation of Cost clause (if completely funded from the beginning) or a Limitation of Funds clause (if only partially funded). These clauses limit the contractor from exceeding the total estimated cost. The clauses require the contractor to notify the Government when it expects to reach 75-85 percent of total estimated costs in the next 30-90 days (these figures are the normal ranges available to the Contracting Officer--exact figures will be specified in each contract). COTRs should review these clauses carefully. They spell out the essential nature of cost-reimbursement contracts in terms of contractor performance obligations and cost limitations.

In cost-reimbursement type contracts, the contractor's risk is minimal. The

Government's risk is commensurately high. It has no guarantee that it will get the specified work. If the work is not completed and the maximum costs have been reimbursed to the contractor, the Government has two choices, sometimes equally unsatisfactory. It can elect to not add funds to the contract and therefore not get any further work, or it can elect to add money to the contract to fund the remaining work.

Given the nature of the work acquired by cost-reimbursement contracts, contractor performance often evolves in ways neither the contractor nor the Government foresaw at the time of award. Because of the high Government risk and the lack of guaranteed performance, cost reimbursement contracts must be monitored far more closely than fixed-price types. The COTR must insure that the contractor is indeed providing its best efforts, and that it is judiciously expending funds and controlling costs.

Cost type contracts should not be used for repetitive buys. If you have a recurring requirement, a definite statement of work should be developed with the goal of reducing risk to the Government through the use of a fixed price contract.

### *Other Types of Contracts*

Besides the fixed-price and cost-reimbursement contracts, there are other contract types, many of which are simply variations of those described above. The most important, in terms of our use, are; Indefinite Delivery Type Contracts, Time



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and Materials and Labor Hour Contracts, and Basic Ordering Agreements (not an actual contract, and cannot be used to restrict competition).

Through implementation of FASA, a preference was established for making multiple awards of delivery order contracts and task order contracts. Also, the Contracting Officer shall give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

### ***FUNDING***

Contracting Officers are responsible, before entering into a contract, for ensuring that sufficient funds are available for obligation. In a fully funded contract, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

An incrementally funded contract is a contract in which the total work effort is to be performed over a long time period, and funds are allotted to cover discernible phases or increments of performance. The incremental funding technique is usually applied to cost-reimbursement contracts for services such as the acquisition of research and development. It should not be applied to construction services and architect-engineer services. This funding technique allows for contracts to be awarded for periods in excess of one year, even though

the total estimated amount of funds expected to be obligated for the contracts are not available at the time of the contract award. If incremental funding is considered for a requirement, the Contracting Officer will provide additional guidance.

A contract funded by annual appropriations may not cross fiscal years with the exceptions of:

- o contracts calling for end products that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services), or

- o basic contracts, options, or orders under that contract for severable services for a period that begins in one fiscal year and ends in the next, for a period of performance not exceeding one year.

As this can have considerable effect on budget management, consult the Contracting Officer for further guidance.

### ***SOURCES FOR SOLICITATION***

Within a particular field of interest, a COTR becomes familiar with many potential sources and acquires knowledge of each source's technical capability, physical resources, experience in a given area, and performance history. The COTR should use this knowledge in developing a recommended source list for the Contracting Officer. The COTR also should review appropriate business and scientific journals

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to identify new sources, in addition to those the Contracting Officer will obtain from advertising in the Commerce Business Daily.

It is Government policy that Contracting Officers must publicize contracting actions in the CBD in order to:

- o increase competition;
- o broaden industry participation in meeting Government requirements; and
- o assist small business concerns, small minority business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

When market research conducted by the usual methods fails to yield sufficient information, "Sources Sought" notices in the CBD may be a useful tool for expanding the search. We may use these notices to request information on products of a certain type, or simply to locate possible sources for unusual requirements. Notices must be clearly worded to preclude submission of proposal-type documents. We must not cause potential sources to incur any significant costs in preparing responses to Sources Sought notices.

The Contracting Officer has direct access to several standard source lists and vendor directories. The Small Business Specialist maintains listings of companies that have marketed directly to your Bureau and can provide supplies and services for your recurring needs. Often these companies have gleaned information from Treasury

publications, such as the Forecast of Contract Opportunities, or from outreach efforts and are familiar with your organization's mission. The point is that all reasonable effort to maximize competition must be made. The Contracting Officer is charged by Federal law to do this and must have the COTR's full understanding and cooperation to do it well.

### ***ACQUISITION THROUGH OTHER THAN FULL AND OPEN COMPETITION***

"Other than full and open competition" is authorized under certain conditions. This is popularly thought of as "sole sourcing" or "noncompetitive procurement," but these are misnomers: in some instances, other than full and open competition may require limited competition.

Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions listed below. It should be noted that lack of advance planning or concerns about funds availability are not bases for avoiding competition. Use of any exception requires an approved "Justification for Other Than Full and Open Competition" (Also see Part II, *COMPETITION IN CONTRACTING*), except when contracting under FAR Part 8, "Required Sources of Supplies and Services" and Part 13, "Simplified Acquisition Procedures." The exceptions are:

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1. *Only one responsible source, and no other supplies or services will satisfy agency requirements.* Examples include follow-on contracts for major systems; unsolicited proposals; existence of limited rights in data, copyrights, patent rights, secret processes, or control of basic materials; public utilities; or contracts pursuant to an agency standardization program. Use of this exception must be supported by a synopsis of the proposed contract action in the Commerce Business Daily (CBD), for acquisitions exceeding \$25,000.

2. *Unusual and compelling urgency.* This exception applies to situations wherein unusual and compelling urgency precludes full and open competition, and delay would result in serious injury to the Government. The JOFOC must contain the rationale as to the extent and nature of harm to the Government. However, the Government must still solicit and consider as many potential sources as practicable. A typical example is acquisitions to support disaster relief efforts.

3. *Industrial mobilization;* engineering, developmental, or research capability; or expert services. This exception is used to maintain suppliers for national emergency or to achieve industrial mobilization; to establish or maintain essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center; or to acquire the services of an expert for any current or anticipated litigation or dispute.

This exception differs from "full and open competition after exclusion of sources" in that this exception is for the purpose of soliciting only one source whereas "exclusion" applies where only some of the potential sources are actually being excluded from competition. Examples of use of this exception include maintaining vital facilities for national emergency, training a selected supplier, preventing loss of capability, maintaining active engineering, research, or developmental work, or acquiring the services of an expert to assist the Government with any litigation or dispute, or a neutral person to facilitate the resolution of issues in an alternative dispute resolution process.

4. *International agreement.* This exception is authorized where terms of an international agreement preclude full and open competition, or when directed in writing by a foreign government which reimburses the agency for the cost of the acquisition, or the supplies or services for such government.

5. *Authorized or required by statute.* Full and open competition need not be provided for when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or when the agency needs a brand name commercial item for authorized resale. Examples include acquisitions from Qualified Nonprofit Agencies for the Blind or other Severely Handicapped, acquisitions under the Small Business Administration's 8(a) Program, or acquisitions from Federal Prison Industries. Acquisitions from these

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sources do not need to be supported with a JOFOC.

6. *National security.* This exception may be used when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits offers. The acquisition must still be synopsized if that will not violate security and as many sources as possible must be solicited. This exception cannot be used merely because an acquisition carries a security classification.

7. *Public interest.* The other requirements of CICA notwithstanding, the head of the agency may determine that conducting a particular acquisition with less than full and open competition is in the public's interest. Only the head of the agency may make this determination, it must be in writing, and the Congress must be notified in writing of such determination not less than 30 days before award of the contract.

### ***Justifications and Approvals Required***

The program office should discuss prospective requests with its supporting contracting office as early as possible during the acquisition planning stage, preferably before submitting the purchase request. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays that might otherwise occur should it be determined that the request for other than full and open competition is not justified.

When a program office desires to obtain certain supplies or services by contract without full and open competition, it shall, at the time of forwarding the purchase request, furnish the Contracting Officer with a justification (JOFOC) explaining why full and open competition is not feasible.

### ***UNSOLICITED PROPOSALS***

An "unsolicited proposal" is a written proposal to perform a task or effort, prepared and submitted by an organization on its own initiative without solicitation from Treasury. It must be an original effort by the offeror in the form of new ideas, which must meet a series of tests to be considered. Advertising material, commercial product offerings, and contributions or inventions are not considered to be unsolicited proposals.

Contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offeror an understanding of the Departmental/Bureau mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal.

It is important to distinguish between unsolicited proposals and technical correspondence. Technical correspondence includes written inquiries regarding Treasury's interest in research descriptions or suggestions which request or require no

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Treasury funding. Correspondence of this nature is handled directly between the interested individual or organization, and the appropriate office employee.

It should be emphasized that acceptance of an unsolicited proposal and its subsequent award as a contract constitutes a contract award with other than full and open competition. It must be supported by an approved justification for other than full and open competition and by a synopsis of proposed contract action, published in the Commerce Business Daily.

### ***SMALL BUSINESS PROGRAM***

It is the policy of the Department of the Treasury to ensure that a fair proportion of its procurement expenditures go to small business firms, small minority businesses, and women-owned small business enterprises. The Department's Office of Small Business Programs (OSBP) implements policy and coordinates the establishment of Treasury goals. It assists bureaus in identifying suitable procurements through the screening of current and prospective awards.

As prescribed by TD P 76-01.B, "Small Business Program Handbook," all open market acquisitions for goods or services as listed on the Treasury class set-aside list shall be reserved exclusively for small business concerns regardless of dollar value, except where a dollar threshold is indicated.

The COTR, with the assistance of the

bureau's Small Business Specialist (SBS), shall seek, identify, and tailor bureau requisitions to permit participation of qualified small, small minority and women-owned small businesses. The Contracting Officer and the COTR share the responsibility for meeting small business program goals and can participate actively toward their achievement by:

- o Becoming familiar with the specific goals assigned to the bureaus;
- o Identifying portions of work suitable for performance by small businesses that can assist in meeting the goals;
- o Searching out emerging firms eligible for participation that may not be on a current bidders' mailing list; and
- o Keeping open the channels of communication with the SBS in coordinating activities to assure that Treasury will meet its goals.

COTRs are encouraged to contact their respective bureau SBS for assistance in identifying appropriate requirements for which there may be prospective small, small minority and women-owned small business sources available.

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### SECTION 1. PRE-SOLICITATION ACTIVITIES

The contracting process has three phases---preparing for the solicitation, soliciting and awarding the contract, and administering an awarded contract. This Section is concerned with the first of these phases---pre-solicitation activities. It outlines the basic tasks that the Government must complete before it approaches the business community for offers. It concentrates on the responsibilities of the COTR, although many of these tasks require close cooperation with the Contracting Officer to be accomplished effectively.

#### *ACQUISITION PLANNING*

Planning for an acquisition is the best way of ensuring that a supply or service is acquired in the most efficient manner. This process should be coordinated with the Contracting Office as soon as a program need is identified and it becomes obvious that the need must be met outside the Government. Acquisition planning involves a general consideration of all the elements required in connection with a particular acquisition.

Planning helps both the Contracting Officer and the COTR by enabling them to allocate and schedule the work involved and to resolve potential problems early in the process. Failing to schedule the overall acquisition workload may result in an inordinate percentage of contract awards being made in the closing months, weeks, and even days of the fiscal year. Excessive

year-end spending diminishes the integrity of the acquisition process, is not conducive to full and open competition between potential offerors, and invites increased intervention and scrutiny by outside sources.

#### *Market Research and Acquisition Strategy*

Market research is a required part of acquisition planning and is conducted during pre-solicitation, followed by the development of the acquisition strategy.

Market research begins when the program office realizes that an acquisition is necessary and defines, in broad terms, what this effort will entail. It includes assessment of prior contracts, in-depth research for commodities available in the commercial marketplace, and discussions with technical personnel, both inside and outside of the Government. These discussions serve to help determine interest, scientific approaches, technical capabilities, availability of commercial items, and the state-of-the-art relevant to the subject area. In such discussions with people outside the Government, care must be taken not to disclose advance information on any specific acquisition.

Once the market research has been completed and the acquisition strategy formulated, it must be reviewed for program relevance, need, merit, priority, and timeliness by the appropriate management staff. In many agencies, the acquisition strategy development is intimately connected with its budget process because these agencies use the budget process as the primary means of identifying, defining, and

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approving agency acquisitions.

Although many COTRs do not become involved with an acquisition until after the initial budgeting has been accomplished, all COTRs have to deal with budget considerations. This happens, for example, when the initial cost of an acquisition is underestimated and additional funds are required. Although it is important to have funds for an acquisition--especially a major one--included in the agency's budget, occasionally one that has not been included is turned over to a COTR. If funds have not been budgeted, it may still be possible to fund a particular acquisition. COTRs faced with this situation should contact their budget representative for advice and guidance.

It should be emphasized that the Contracting Officer has an integral part with the program offices and COTRs in finalizing the acquisition strategy. For example, he or she can discuss types of contracts suitable for the contemplated acquisition, which impacts the amount and timing of funding needed, and will assist in conducting market research and assessing the capability of the marketplace. Program offices and COTRs must work with their supporting contracting staff early in the development of all requirements.

If it is determined that offerors or the contractor will require access to classified national security information, the COTR shall determine, in consultation with appropriate Treasury or bureau security officials, if the contractor has a current facility security clearance as well as security

clearances for personnel actually involved in the classified aspects of the contract. The process and requirements are outlined in Department of Treasury, Office of Security, Manual TD P 71-10.

The COTR will then prepare, in consultation with appropriate Treasury or bureau security officials, Department of Defense (DD) Form 254, "Contract Security Classification Specification." The completed DD Form 254 will be furnished to the Contracting Officer and copies will be distributed in accordance with instructions on the reverse side of the form. (See also Part IV., *SECURITY*.)

As a part of the acquisition strategy, the COTR must also consider and plan for:

- o the security requirements for facility and/or system clearances,
- o the use and control of Government property,
- o the use of Government sources (for cost reimbursement and contracts awarded under authority of the JWOD program, FAR Part 8), and
- o other areas, as appropriate.

### ***REQUIREMENTS DOCUMENTS***

Prior to the September, 1995, issuance of FAR Part 11, "Describing Agency Needs", the standard terms for describing a requirement were "Specification" and "Statement of Work" (SOW). Specification connotes supplies while SOW connotes services, but the two terms were often used



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interchangeably, in a generic sense.

The terms used in FAR for describing the Government's needs include "requirements document", "description", "specification", and "work statement." Regardless of the nomenclature, requirements are to be stated, to the maximum extent practicable, in terms of:

- o Functions to be performed;
- o Performance required; or
- o Essential physical characteristics.

In this way, offerors can propose methods that will best meet the needs of the Government.

Again, the FAR stated preference is for requirements to be defined in terms that enable and encourage offerors to supply commercial items, or nondevelopmental items.

The description/specification/work statement may be the single most important document in the acquisition process. It describes the work to be performed or the services to be rendered, defines the respective responsibilities of the Government and the contractor, and provides an objective measure so that both the Government and the contractor will know when the work is complete. It should be noted that the description should define requirements that are reasonable and necessary, and for supplies, shall not merely repeat commercial

specifications from a preferred source.

The description/specification/work statement must be precisely worded because it will be read and interpreted by a variety of people, such as attorneys, acquisition personnel, cost estimators, accountants, technical specialists, etc. If it does not state precisely what is wanted, it will generate contract management problems such as ambiguities and delays for both the COTR and the Contracting Officer.

Requirements documents, descriptions, specifications, and work statements are sometimes referred to administrative boards or the courts for interpretation. These interpretations represent what an objective third party thinks is the intention of the document. Generally speaking, the court or board will not concern itself with what the drafter intended to express, but will look at what was expressed. This determination is usually made solely on the bases of the words used and the context in which they appear.

How the description is written affects the entire acquisition cycle. It determines the type of contract that is awarded; it influences the number and quality of proposals or bids received; and it serves as a baseline against which to evaluate proposals or bids and; later, contractor performance. Thus, the description, work statement or specification is the key element in shaping and directing all stages of the acquisition cycle: pre-solicitation, solicitation and contract award, and post award administration.

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### ***PROCUREMENT OF ADVISORY AND ASSISTANCE SERVICES***

Advisory and assistance services are those provided by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or research and development (R&D) activities.

Contracts for advisory and assistance services shall be in accordance with FAR Subpart 37.2, and will proceed under the close guidance of the Contracting Officer.

### ***INDEPENDENT GOVERNMENT COST ESTIMATES***

The Contracting Officer uses several methods to analyze prices proposed by offerors to ensure a fair and reasonable price. One method compares the proposed prices with an independent Government estimate developed by the COTR during the pre-solicitation stage. This is an estimate of the proper price level or value of the supplies or services to be purchased. **(See *SAMPLE format, Attachment H* for guidance in developing an independent Government cost estimate.)**

While independent Government cost estimates are critical to the acquisition process, to be of substantive value they must truly be independent. COTRs must not contact potential offerors to elicit information to help develop their cost estimate. Technical personnel should

normally have a good estimate of staff hours, equipment, travel requirements, etc., that will be required to meet the Government's requirement.

Independent Government cost estimates are developed by (or under the auspices of) the COTR and come in two types: lump sum and detailed. Lump sum cost estimates are the most prevalent, comprising the "total cost" entered on the purchase request. The lump sum may be simply a "best guess" on the part of the COTR or it may be the product of an informal, detailed cost estimation. Either way, the lump sum estimate is generally useful only for broad comparison with offered costs/prices.

### ***EVALUATION PLANNING***

In Part II we discussed the differences between contracting by sealed bidding and contracting by negotiation. The most fundamental difference between the two is that in contracting by negotiation, as the name implies, award is based on the results of discussions, which are based on the results of evaluations of offers (i.e., proposals) received in response to a solicitation.

The evaluation of proposals is based on the evaluation factors specified in the solicitation (the Request for Proposals). The requirements document (description/specification/work statement) and the evaluation factors, taken together, establish the principle ground rules for these acquisitions. The requirement states what supplies or services the Government is

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requesting, while the evaluation factors clearly state the factors that will be used in evaluating proposals and the relative importance of each factor.

The COTR shall work closely with the Contracting Officer to prepare evaluation factors during the development of the description/specification/work statement because these two parts of the Request for Proposals (RFP) are closely connected. Evaluation factors are generally developed, at a minimum, to address these areas:

- o Quality;
- o Price or Cost;
- o Past performance; and
- o Environmental objectives, when appropriate.

The Contracting Officer will exercise discretion in using other factors; only those factors that will have an impact on the source selection decision shall be used. It is important that the evaluation factors be tailored for each RFP, to achieve the objectives of the acquisition strategy.

### **SECTION 2. SOLICITATION AND AWARD**

The primary responsibility shifts to the Contracting Officer during most aspects of the solicitation and award of an acquisition. The COTR primarily plays a supporting role at this stage.

Contracting by negotiation is the most commonly used approach. It is also the most complex and places the most demands on the COTR. In this contracting approach, the Government communicates its requirements to the business community by means of a solicitation document known as a Request for Proposals. In addition to the description/specifications/work statement, this document contains various representations and certifications to be completed by offerors, and the proposed terms and conditions for the resulting contract. Also included are instructions to offerors to guide them in preparing their proposals, and information telling offerors how the Government will evaluate proposals to determine which offer will be selected for contract award.

In the simplified commercial item format many requirements that apply to RFP and IFB solicitations have been eliminated. Although CI provisions and clauses more closely resemble marketplace practices, some unique Government requirements still apply. These include certifications and representations (such as those relating to the Small Business Act, Equal Opportunity, and Buy American Act), instructions to offerors, and warranty terms and conditions.

As acquisition team members become familiar with the CI procedures, they, as well as the vendor community, will find the process simpler and easier. It is important to remember that the CI acquisition package will combine commercial items requirements with negotiated, sealed bid, and simplified acquisitions processes, as applicable to the

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subject acquisition.

### ***THE REQUEST FOR PROPOSALS***

The purpose of the RFP is to convey information that prospective offerors need to prepare a proposal. The RFP describes all the information that prospective offerors must furnish to permit a meaningful and equitable evaluation of their offers. The RFP must be clear, complete, accurate, and consistent with the requirements of the acquisition so that it provides all who receive it with the same understanding of the requirements.

The Contracting Officer is responsible for preparing the RFP, with the assistance of the COTR. However, much of the information in the RFP is derived directly from the purchase request or is otherwise furnished by the COTR. Normally, the Contracting Officer does not have the technical knowledge to uncover or correct any substantive deficiencies that may exist in the technical data. The COTR must, therefore, take care to develop a purchase request and supporting documentation during the pre-solicitation phase that will fully satisfy program needs and objectives when included in the RFP. While "acquisition" lead-time begins with preparation of the purchase request, your Contracting Officer cannot begin the procurement process until your purchase request is complete, including a clearly written statement of needs; certification of funds; JOFOC; and other clearances that may be needed. Therefore, "procurement" lead-time does not begin until

you have provided your Contracting Officer with a complete purchase request package ready to use as the basis for the RFP. The COTR should review the final RFP before it is printed and released.

### ***AMENDING THE SOLICITATION***

It may be necessary to amend the RFP during the solicitation period. This circumstance could occur for a variety of reasons--for example, material changes are made in the specifications, terms or conditions contained in the original solicitation, or quantities are increased or decreased. Amendments to solicitations increase administrative effort and costs, and they may delay contract award and performance. For this reason, they should be held to a minimum through careful acquisition planning. When an amendment is unavoidable, as in situations where questions from contractors regarding the RFP must be answered, contracting personnel prepare and distribute it to all recipients of the RFP. Any amendment to an RFP must provide a reasonable time for potential offerors to respond to the change.

### ***RECEIPT AND MANAGEMENT OF PROPOSALS/BIDS***

Proposals/bids received under a competitive procurement may be accepted only by the Contracting Officer. Their receipt will be recorded by time and date, and they will be properly safeguarded by the Contracting Officer.

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No proposal/bid received after the time and date specified in the RFP/IFB will be accepted unless it is received before an award is made and meets specific requirements outlined in the FAR. (Details are contained in FAR Part 14, "Receipt and safeguarding of bids", and substantially apply as well to handling of proposals.)

One of the most important administrative responsibilities of program and contract personnel during the pre-award period is to maintain the confidentiality of the proposals/bids received. Unless offerors are assured that their data will not be revealed to their competitors, they may be unwilling to provide the Government with technical data and other essential information about their operations. However, care must be taken when considering the use of disclosure of technical data to ensure that Treasury has sufficient rights to use the data in the desired manner. To preclude the improper use or disclosure of the offeror's data, program personnel must ensure that their receipt, storage, and handling of proposals/bids for evaluation include all the safeguards necessary to prevent disclosure.

In addition, program personnel must not reveal any information related to the identity or number of potential contractors, information concerning any proposal/bid, or the status of any in relation to others. Release of such information could jeopardize any resultant award and subject the persons involved to disciplinary action.

After the closing date, the Contracting Officer will forward the technical proposals

to the COTR or Source Selection Evaluation Board (SSEB) chairperson for evaluation. The Contracting Officer will normally retain the business proposals until the technical evaluation is completed.

### ***COMMUNICATION WITH OFFERORS***

Effective communication between Government and industry during all phases of the acquisition process is critical for success. The government must strike a balance between promoting partnerships with industry and ensuring that no firm is given a competitive advantage over another.

COTRs should discuss procedures for communicating with industry with the Contracting Officer before proceeding with any contacts. Communications may include: conducting market research; holding pre-solicitation conferences and site inspections; responding to vendors' questions; and any other verbal or written communication.

The RFP/IFB gives the name of the Contracting Officer and states that only he or she represents the Government. All correspondence to prospective offerors (relating to the particular acquisition) must be signed by the Contracting Officer or the authorized representative, and all correspondence from prospective offerors (relating to the acquisition) must be received by the Contracting Officer. In addition, under no circumstances should the COTR conduct private tours of any portion of the facility.

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Information given to a prospective offeror shall be furnished promptly to all other prospective offerors as a solicitation amendment if the information is necessary in submitting proposals/bids or if the lack of such information would be prejudicial to a prospective offeror.

### ***REVIEW OF PROPOSALS/BIDS***

Treasury's policy is to select contractors on the basis of review of offers and to document source selections thoroughly. These reviews are generally accomplished by the combined efforts of the Contracting Officer, the COTR, and other personnel as may be necessary. The mix and degree of participation of these individuals depend upon the type of offer(s) being evaluated.

#### ***Source Evaluation***

All proposals submitted in response to an applicable RFP will be evaluated to determine which are technically acceptable. The COTR/evaluation team or, if a formal source selection, the SSEB, including the COTR, is responsible for evaluating the original technical proposals; ranking them in order of merit; making recommendations to the Contracting Officer regarding clarifications needed and deficiencies identified; reviewing supplemental and/or revised offers; and, if required, assisting the Contracting Officer during discussions. To the extent possible, the same evaluators should be available throughout the entire evaluation and selection process to ensure continuity and consistency in the treatment

of proposals.

#### ***The Technical Evaluation Report***

When the Contracting Officer forwards the technical proposals to the COTR/evaluation team or SSEB for evaluation, they will be accompanied by specific guidance for conducting the evaluation and for preparing the Technical Evaluation Report.

The Technical Evaluation Report must be prepared and signed by the SSEB or the COTR (and the COTR's supervisor and other managers, depending upon the dollar value of the acquisition), for submission to the Contracting Officer. The report is maintained in the source selection file or contract file. The report should reflect the ranking of proposals and identify each proposal as acceptable or unacceptable. The report must also include a narrative evaluation specifying the strengths and weaknesses of each proposal and any uncertainties, reservations, qualifications, or areas to be addressed that might affect the selection of the source for award.

The report should include specific points and questions that are to be raised in subsequent discussions with offerors. A determination of technical unacceptableness must be supported with concrete technical data and/or other rationale. Phrases such as "it could not be determined" and "sketchy presentation" for example, is not adequate support for unacceptable ratings. Since the narrative forms the basis for later debriefings, specific references and terms must be used.

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### ***Review of Business/Cost Proposals***

Contractors responding to an RFP must submit a cost proposal in addition to a technical proposal. Regardless of whether or not price competition will be obtained, the COTR needs to make sure that the prices offered are within the range that the program has budgeted and that offered prices reflect an understanding of the Government's requirements. The COTR also assists the Contracting Officer in determining whether offered prices are fair and reasonable.

The Contracting Officer is responsible for evaluating contract terms and conditions, cost/price, the offeror's responsibility (e.g., adequate financial resources, ability to comply with delivery or performance schedule, satisfactory record of performance, etc.). The Contracting Officer will need the SSEB/COTR's assistance to effectively accomplish this. The Contracting Officer may also be assisted by cost analysts and field pricing support, provided by the Department's Office of Inspector General, Contract Audit Branch.

The COTR/evaluation team or SSEB should be prepared to analyze such items as:

- o proposed travel, including number of trips, locations, purpose, and travelers and
  - o the type and quantity of data processing requirements.
- The COTR/evaluation team or SSEB should inform the Contracting Officer of whether these elements are necessary and reasonable for efficient contract performance. Exceptions to proposed elements should be supported in sufficient detail to allow the Contracting Officer to negotiate effectively.
- In addition, the Contracting Officer may request that the COTR/evaluation team or SSEB review cost or pricing data as a means of facilitating the decision about including a proposal in the competitive range.

### ***DETERMINING THE COMPETITIVE RANGE***

After initial identification of proposals not considered acceptable, the COTR/evaluation team or SSEB will evaluate the remaining proposals in accordance with the scoring system established in the solicitation. After this evaluation is completed, the proposals will be reviewed to recommend which proposals to include in the competitive range; namely, those which have a reasonable chance of being selected for award. The competitive range will consist of the best proposals, based only on the evaluation of the factors included in the solicitation. When there is doubt as to whether a proposal should be included within

## PART III. THE PROCESS

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the competitive range, include it.

The competitive range will be determined on the basis of the array scores or relative ranking of the offerors, but not on the basis of a predetermined passing score.

### ***DISCUSSIONS AND SELECTION FOR NEGOTIATION***

After the Contracting Officer has determined the competitive range the process moves into the discussion phase.

The Contracting Officer and the SSEB/COTR should discuss uncertainties and/or other deficiencies that are included in the technical evaluation report for each proposal in the competitive range. Technical questions should be developed by the COTR/evaluation team or SSEB and should be included in the technical evaluation report. The management and cost or price questions should be prepared by the Contracting Officer, with assistance from the SSEB/COTR as necessary and from cost advisory personnel.

Careful judgment will be exercised in determining the extent of discussions. The time available, the expense and administrative limitations, and the size and significance of the acquisition will be considered in deciding on the type, duration, and depth of the discussions, and whether discussions will be conducted in writing or orally.

Under certain conditions, award may be

made without holding discussions. This decision is made well in advance of evaluating offers. In the following circumstances, the requirement for holding discussions need not be applied:

- o Prices are fixed by law or regulation;
- o Awarding the set-aside portion of a partial set-aside acquisition; or
- o The solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussions.

The Contracting Officer may determine that discussions are necessary, however, even when the stated intent was to award without discussions. Note that the commercial item provision 52.212-1(g) states: "The Government intends to evaluate offers and award a contract without discussions with offerors."

Upon receipt of revised offers or other responses to questions raised during discussions, the COTR/evaluation team or SSEB will reevaluate the proposals in the competitive range. These evaluations will be prepared and submitted in writing to the Contracting Officer for his/her review of the latest evaluations.

The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. The Contracting Officer will then request best and final offers (BAFOs) from all offerors in the competitive range.



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The COTR/evaluation team or SSEB will evaluate all BAFOs and make a final report to the Contracting Officer.

The Contracting Officer will then identify and, in formal source selection, recommend to the Source Selection Authority the offeror whose proposal is the most advantageous to the Government, all factors considered. The Source Selection Authority varies depending upon the dollar value of the acquisition, but in many cases it is at a level above the Contracting Officer.

### ***DEBRIEFINGS***

Within three days after the date of award, the Contracting Officer shall notify, in writing or electronically, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award.

In situations that normally require preaward notices, one is not required when the Contracting Officer determines that the urgency of the requirement necessitates award without delay.

If, within three days of receiving notice, an offeror requests in writing a debriefing as a result of such notice, the offeror shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, untimely debriefing requests shall be accommodated, but this does not extend the time within which suspension of performance can be required. To the maximum extent practicable, the debriefing should occur within five days after receipt of

the written request.

If an unsuccessful offeror believes that its failure to obtain the award was not justified, it will rely, at least in part, on the information given in the debriefing to determine whether it should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror is absolutely factual and consistent with the findings of the Contracting Officer and the basis on which the award was made.

A debriefing should not reveal confidential or privileged commercial or financial information, trade secrets, techniques, or processes of the other offerors, point-by-point comparisons with proposals of other offerors, or names of individuals providing reference information about an offeror's past performance.

### ***NEGOTIATION, SELECTION AND AWARD***

#### ***Negotiation***

Once the Contracting Officer or Source Selection Authority has selected for negotiation the proposal most advantageous to the Government, all factors considered, a negotiation strategy will be developed. "Negotiation," as used here, means the process by which the Contracting Officer resolves weaknesses and deficiencies in the technical and management aspects of the proposal, and resolves any unbalanced or

## PART III. THE PROCESS

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unallowable costs in the business proposal.

After the completion of negotiations, the Contracting Officer will prepare all necessary contract award documents. It is possible that the negotiations might result in the determination that the proposal should not be selected, in which case the proposal would lose its standing in the competitive range and the next proposal would be selected for negotiation, subject to approval by the Source Selection Authority. Alternatively, it is possible that the proposal determined to be most advantageous to the Government, all factors considered, is acceptable for award exactly as proposed (including any revision subsequent to discussions), in which case negotiations would be unnecessary and the Government could proceed with award.

### *Selection for Award*

Upon completion of all negotiations, the Contracting Officer will award, or recommend the successful proposal to the Source Selection Authority for award. The SSA is at least one level above the Contracting Officer, the exact official being dependent upon the value of the proposed contract action. The SSA will approve or disapprove the recommendation, identifying any qualifications need for changes to the proposed contract thahe or shehe deems necessary.

### *Completion of Contract Award*

The Contracting Officer is responsible for preparing the final contract document.

Before release of this document to the contractor for signature, the Contracting Officer coordinates with all parties to the negotiation to assure that the final document fully delineates the agreement reached at negotiations and is representative of the needs of the program office. An important element of this final phase is to ensure that the schedule anticipated for receipt of supplies and/or services remains accurate. For example, when ordering computer equipment that requires environmental changes to the government facility, ensure that completion of those changes occurs before the equipment arrives, and ensure that Government-furnished property is furnished as agreed.

## PART IV. POST AWARD ADMINISTRATION

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Contract administration involves ensuring that the contract is performed--as written--by both the contractor and the Government.

No matter what type of contract is involved, a breakdown in administration can undo all previous achievements discussed in the other parts of this handbook. On the other hand, effective administration can overcome problems the parties had not anticipated when drafting the contract. The COTR must monitor a contractor's progress closely and make known to the Contracting Officer potential problems that threaten performance so that remedial measures may be taken.

Administration of a contract begins after negotiations have been successfully concluded and the contract has been signed; it ends at the closeout of the contract when performance has been completed and the contractor has received final payment. Therefore, contract administration includes all the functions and duties listed at FAR Subpart 42.3, including:

- o monitoring the contractor's technical progress;
- o approving invoices for payment in accordance with contractual terms;
- o controlling Government property;
- o monitoring subcontractors;
- o reviewing purchase, delivery, and task orders;

- o tracking and reporting system and equipment downtime;

- o reviewing value engineering change proposals and recommending appropriate action to the Contracting Officer;

- o evaluating cost and technical proposals submitted as a result of changes or as requested by the Contracting Officer;

- o analyzing and providing a recommendation to the Contracting Officer for acceptance or rejection of value engineering change proposals;

- o overseeing contract modifications and terminations where authorized; and

- o performing any and all other administrative tasks required by the contract.

Contract administration can be simple, or complex and time consuming, depending on the type of contract, contractor performance, and the nature of the work. For example, a fixed-price contract requires relatively little post-award administration, whereas a cost-type contract requires careful technical surveillance and auditing of cost.

No matter what type of contract is involved, however, it must be closely monitored. If technical or business problems are not solved before they disrupt the contractor's scheduled performance, the Government may find itself in a situation of a pending termination or unnecessary costs that could

## PART IV. POST AWARD ADMINISTRATION

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have been avoided if the Government had administered the contract properly.

### ***COMMUNICATING WITH THE CONTRACTING OFFICER***

The Contracting Officer delegates certain contract administration functions to the COTR, but the legal responsibility for the contract remains with the Contracting Officer. The COTR functions as the "eyes and ears" of the Contracting Officer, monitoring technical performance, and reporting any potential or actual problems to the Contracting Officer.

It is imperative that the COTR stays in close communication with the contractor and the Contracting Officer, relaying any information that may affect contractual commitments and requirements. In administering a contract with a small business concern, the COTR must keep the Contracting Officer apprised of any administration concerns the contractor may have. This will enable the Contracting Officer to make every reasonable effort in responding to a small business's request regarding an administration matter within 30 days, as required by FAR.

### ***POST AWARD ORIENTATION***

The fundamental task of Government contract administration is to ensure that the contractor fulfills its obligations. Post-award orientation is a useful tool for ensuring good contractor performance by:

- o ensuring that the contractor understands the contract requirements;

- o identifying and assisting the Contracting Officer in resolving potential problems;

- o clarifying contract administration procedures that will be applied; and

- o clarifying the roles of Government personnel who will be involved in administering the contract.

As an alternative to a formal post-award orientation, the Contracting Officer may issue a letter or conduct the orientation telephonically. Generally, this method is used when the contractor has previous experience providing the service or product, the procurement is relatively simple, and only minor clarifications are required. This letter would also identify the Government officials responsible for contract administration and clearly identify any special or unusual requirements, such as production tests, special reports, and subcontracting consent requirements.

At the Contracting Officer's discretion, a post-award conference may be held to explain the rights and obligations of both the contractor and the Government.

Conferences may be justified:

- o when awarding to a business that lacks experience in Government contracting;

## PART IV. POST AWARD ADMINISTRATION

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- o for construction or other complex contracts or for new requirements; or

- o when existing or potential problems may adversely affect contract performance.

Any post award orientation conference will usually be preceded by a meeting of all the Government personnel with administrative responsibilities for the contract to establish a coordinated Government position regarding the agenda and the specific responsibility of each Government representative. The agenda will cover all matters that need to be clarified or otherwise discussed with the contractor to avoid misunderstanding of the contract requirements. A copy of the agenda should be sent to the contractor prior to the conference, to allow the contractor to provide feedback and to participate in the setting of the agenda.

If the Contracting Officer does not chair the orientation conference, this responsibility can be delegated to the COTR. The conference should be conducted in a businesslike manner, with the recognition that both parties have an existing contractual relationship and that the purpose of the conference is to promote accurate understanding of the contract, not to alter it.

Post-award orientation of subcontractors is the responsibility of the prime contractor. If it appears desirable for Government personnel to attend a subcontractor orientation conference, Government representatives attending should recognize

that the Government has no privity of contract with the subcontractor. All instructions, interpretations, or other contractual dealings with the subcontractor are the business of the prime contractor, unless problems arise that cannot be resolved by the prime contractor.

### ***INSPECTION AND ACCEPTANCE RESPONSIBILITIES***

Before supplies or services required by the contract can be accepted, acceptability must be determined by review, test, evaluation, or inspection. These functions are performed by the COTR, who then reports the results to the Contracting Officer. **(See SAMPLE Attachment E)**

In purchases of commercial items the Government shall rely on the contractor's current quality assurance program in lieu of complying with the Government's systems of inspection and testing prior to acceptance.

Final acceptance of the supplies or services by the Contracting Officer concludes performance by the contractor, except for administrative details relating to contract closeout. After final acceptance, the contractor can no longer be held responsible for unsatisfactory effort, unless otherwise specified in the contract. The COTR must ensure that the work performed under the contract is measured against the work statement. If performance does not meet contract requirements, it is incumbent upon the COTR to identify deficiencies and to recommend changes to the Contracting

## PART IV. POST AWARD ADMINISTRATION

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Officer so that remedial action can be taken before final payment and contract closeout. (Also see *Deliverables* in the following section)

### ***CONTRACT MONITORING***

The contractor has primary responsibility for performance of the contract, but the COTR and the Contracting Officer have a vested interest in continually monitoring contractor performance. Unsatisfactory performance under a contract may jeopardize a project and even an entire program.

In monitoring a contractor's performance, the Government is primarily interested in progress toward completion of the specified requirements and the financial status of the contract. One valuable tool in this area is reporting requirements. The Government may require in the contract document that the contractor provide progress or administrative reports. It must be remembered, however, that the contractor will charge the Government for all reports.

Additional information may be obtained from letters and phone calls between the contractor, and COTR and Contracting Officer. Visits to the contractor's facilities are sometimes necessary to evaluate the contractor's performance. However, it is important to maintain a reasonable balance. Although the Government has a right and a duty to monitor contractor performance, Government personnel may be subject to charges of interference in the contractor's operation or of making unreasonable

demands if discretion is not used in this area.

### ***Technical Progress Reports***

Progress reports should include all relevant details to provide the COTR with information on the progress of the work. However, they should not become too burdensome to prepare. Technical progress reports may be submitted in letter form and may include the number and names of persons working on the project; the facilities devoted to the work; the number of workdays expended; the direction of the work; and the latest observations, problems encountered, predictions, plans for the next reporting period, and actions required by the Government, if any.

### ***Financial Status Reports***

Financial reports are an important element in administering cost-reimbursement type contracts. They reveal the financial status of the contract and provide information that is helpful in avoiding or anticipating costs exceeding estimates. Financial reports provide both the COTR and the Contracting Officer with a means of checking the contractor's expenditures based on the negotiated cost elements and enable them to match the costs incurred with the technical results achieved.

The amount of detailed financial information required will vary, depending on the type of contract involved, the nature of the work or services being procured, and the method of payment. Under a cost reimbursement contract, the contractor is entitled to full and

## PART IV. POST AWARD ADMINISTRATION

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prompt payment for all incurred allowable costs, unless specified in the contract, pending completion of performance. Therefore, cost-reimbursement contracts require close monitoring by the COTR so that the Government does not pay excess costs for the end product either because of a contractor's inefficiency (e.g., missed schedules, unacceptable reports), or as a result of unforeseen problems which, if promptly addressed, could have prevented excess costs.

### ***Deliverables***

The COTR is responsible for determining whether supplies delivered or services performed by the contractor conform to the technical requirements of the contract. In discharging this responsibility, the COTR should keep in mind that, once a contractor's work has been formally accepted, the contractor is excused from further performance or correction of work that has already been accepted, should it prove to be unsatisfactory, except for latent defects (see Glossary).

In some contracts, the end result or deliverable is a report, such as a study. The COTR is responsible for conducting a technical review of the report, comparing it to the requirements set forth in the contract work statement or specification. Where appropriate, the COTR should solicit the comments and concurrence of other technical experts and/or from other affected program personnel. Any required revisions must be transmitted to the contractor over the signature of the Contracting Officer.

In the event that the work is deemed unsatisfactory, the COTR and the Contracting Officer must determine what further actions are required and seek the advice of legal counsel if necessary. The COTR should provide written notification to the Contracting Officer when the contract work has been judged complete and technically acceptable, so that the Contracting Officer can communicate acceptance to the contractor.

### ***Reviewing Invoices and Vouchers***

Contractors are required to submit invoices and vouchers to Treasury for work completed or costs incurred. COTRs are responsible for reviewing and approving invoices and vouchers on contracts. The COTR will receive instructions regarding his/her involvement in the review and approval of invoices and vouchers from the Contracting Officer.

The Prompt Payment Act requires that the Government pay its debts in a timely fashion. A liability (interest) is generally imposed when payment for supplies or services are not paid by the date payment is due under the contract. If no date is provided in the contract, payment is due within 30 days after receipt of a proper invoice. Interest is computed from the first day after the due date through the date of actual payment. Therefore, it is imperative that invoices are processed for payment as expeditiously as possible.

### ***CONTRACTOR PERFORMANCE EVALUATION***

## PART IV. POST AWARD ADMINISTRATION

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FAR 42.15, *Contractor Performance Information*, sets forth the policies and responsibilities for evaluating contractor performance for contracts exceeding \$1M. This past performance information is required for future source selection purposes. The COTR should communicate with the contracting officer in establishing the past performance evaluation requirement. The COTR will provide the Contracting Office with interim and annual performance evaluations for assigned contracts.

Currently, there are a variety of past performance information systems in use throughout the Department. Where agencies are using a system that meets the requirements of FAR, they may be continued at the discretion of the agencies.

We encourage the voluntary development of a uniform agency-wide format for recording contractor performance information for ease of use by source selection officials.

Included at **Attachment F** is an interagency-developed Contractor Performance Report format, provided in the OFPP *Best Practices in Past Performance* guide, as one possible approach to developing an agency-wide system. This form can also be used by a source selection team as a questionnaire (survey form) to request and record comments from a reference.

This form is not intended to represent the only way to comply with FAR Part 42.15. Agencies that believe other mechanisms would permit more cost-effective evaluation of contractor performance are encouraged to

pursue them. The key is to make the evaluations fit the type of information needed for use in source selection for the type and complexity of the contract. The only limitation is that all rating systems are translatable into five basic ratings - excellent, good, fair, poor, and unsatisfactory - and one exceptional rating - excellent plus - so that any source selection board can use information from a variety of agencies.

For construction and architectural engineering contracts, SF 1420 and SF 1421, respectively, will normally provide for the collection of pertinent evaluation information. OFPP also suggests adding a reference to these contracts concerning required performance evaluations and the manner in which evaluations will be conducted.

Six areas are specified in the Contractor Performance Report for rating:

- (1) Quality of Products and/or Services;
- (2) Cost Control;
- (3) Timeliness of Performance;
- (4) Business Relations;
- (5) Customer Satisfaction (End Users); and
- (6) Key Personnel.

The first three areas rate how well the contractor complied with the contract.



## PART IV. POST AWARD ADMINISTRATION

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Areas four and five evaluate the business relationship between the contractor, the Contracting Office, and the COTR/Program Office. The sixth area concerns the performance of the contractor's key personnel.

The evaluation is provided for the contractor's review. The contractor shall be given a minimum of 30 days to respond to the evaluation or provide additional information. The evaluation and contractor submitted information shall be reviewed at a level above the Contracting Officer for consideration of any disagreements between the parties. The ultimate conclusion is a decision of the contracting agency.

Less formal evaluation procedures may be adopted for use with commercial item contracts.

### ***INADEQUATE CONTRACTOR PERFORMANCE***

In a delinquency or default situation, contractor performance is delayed, inadequate, or both. COTRs must thoroughly understand the rights and responsibilities of both the Government and the contractor so that they will do nothing that might be considered prejudicial to either party.

When unsatisfactory contract performance is identified, the COTR should notify the Contracting Officer promptly so that remedial steps can be taken. Silence on the part of the Government could be interpreted

by the contractor as acceptance by the Government. Such situations could adversely affect the Government's right to withhold payments, terminate for default, or otherwise exercise certain rights under the contract.

Unsatisfactory performance can be considered in degrees, and the Government's actions can be oriented to correct the unsatisfactory performance or to protect the Government's interest in the event of contractor's default. Depending upon the Contracting Officer's evaluation of the seriousness of the unsatisfactory performance, he or she may:

- o by letter or through a meeting, bring the particular deficiency to the attention of the contractor and obtain a commitment for appropriate corrective action;

- o extend the contract schedule if excusable delays in performance are involved;

- o withhold contract payments if the contractor fails to comply with delivery or reporting provisions of the contract, or correct payments to reflect actual services performed satisfactorily; or

- o terminate the contract for default.

After a complete review of the situation, the Contracting Officer may send a show cause or cure notice of failure of performance to the contractor. These notices, which

## PART IV. POST AWARD ADMINISTRATION

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officially notify the contractor of the delinquency, require the contractor to inform the Contracting Officer of the cause(s) of the delinquency so that a proper determination can be made concerning continuation of, or partial or complete termination of, the contract.

Without express authority from the Contracting Officer to the contrary, the COTR should have no contact with the contractor during this period. Any action that might encourage the contractor to continue performance may have the effect of waiving the Government's rights under the contract.

### ***Withholding Payment***

All Government contracts contain a clause allowing the Government to withhold payments. A contractor's failure to either submit a report, or perform or deliver supplies or services when required by the contract is considered a default in performance. In either circumstance, the Contracting Officer will usually issue a formal "cure notice," which is to include a statement to the effect that contract payments will be withheld if the failure is not "cured" or is not determined to be excusable. A "cure notice" from the Contracting Officer points out a deficiency in contractor performance and directs that it is "cured" within 10 days or a longer period of time.

If the failure is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer initiates withholding action on all

contract payments and determines whether termination for default or other action would be in the best interest of the Government. When determination is made that contract payments should be withheld, the Contracting Officer will immediately notify the contractor in writing that payments have been suspended until the failure is cured.

### ***Terminations***

Situations may arise when the work contracted for does not run to completion. Standard contract clauses are designed to cover this eventuality. The Government may terminate for a contractor's default or at the Government's convenience. In commercial item acquisitions, the terms used are "Termination for Cause" and "Termination for Convenience."

Terminations can be either partial or complete; that is, all or any part of the work can be subject to the termination. The portion that is not terminated must be completed by the contractor. The contractor has no contractual right to decide that the remaining work is insufficient to merit its attention and then opt not to continue with it. No matter what type of termination is issued, or the extent of the terminated portion of the work, the decision to terminate is a unilateral right of the Government.

### ***Termination for Convenience***

The Termination for Convenience clause gives the Government the right to cancel a contract when to do so is in the best interest

## PART IV. POST AWARD ADMINISTRATION

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of the Government, notwithstanding the contractor's ability and readiness to perform.

Termination for convenience may require that a financial settlement be made for the work that has been accomplished under the contract up to the effective date of the termination. Settlements may be reached by one, or a combination of the following methods:

- o negotiated agreement;
- o determination of the Contracting Officer; and
- o costing out under invoices or vouchers (in the case of costs under cost-reimbursement contracts).

Following the termination, the Government and the Contractor may need to reach an agreement on an equitable settlement. The Contracting Officer evaluates the contractor's settlement claim and establishes the Government's position with respect to the various elements of cost or price included. A cost or price analysis must be performed and, in some cases, the contractor's books and records must be audited. A memorandum documenting the negotiations must be placed in the contract file.

### ***Termination for Default***

The Termination for Default clause allows the Government to terminate the contract when the contractor fails to perform the work within the time specified in the

contract, to prosecute the work so as to endanger performance of the contract, or to perform any other contract requirements within the period provided by a "cure notice." Once a Contracting Officer has determined that it is necessary to invoke the Termination for Default clause, the COTR should have no further contact with the contractor unless specifically directed to do so by the Contracting Officer.

### ***Termination for Cause***

This clause used in CI contracts allows the Government to terminate a contract, or any part of a contract, for cause in case of default by the contractor. It also applies if the contractor fails to comply with any of the contract's terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. Upon termination for cause, the Government is not liable for any supplies or services not accepted. The contractor shall be liable to the Government for all rights and remedies provided by law. However, if it is decided that the Government improperly terminated this contract for default, the termination will be deemed a termination for convenience.

### ***Alternative Dispute Resolution***

Alternative Dispute Resolution (ADR) is a means of resolving issues in dispute without resorting to litigation. The aim of this procedure is to expedite controversial issues as inexpensively as possible. In a situation calling for ADR, the Contracting Officer will direct the COTR as to what assistance is needed.

## PART IV. POST AWARD ADMINISTRATION

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### ***CONTRACT MODIFICATIONS***

A contract modification is a written alteration of contract provisions, (e.g., work statement, period of performance, quantity, price or other terms of a contract), accomplished in accordance with a contract clause or regulation. During the contract life, different types of modifications may be necessary to incorporate new requirements or to handle problems that develop after contract award.

All contract modifications must be priced and issued in writing by the Contracting Officer. The only exception to this rule would be that by delaying the modification for pricing the Government would be harmed. Requiring modifications to be in writing reduces potential for misunderstanding between the parties concerning work to be performed.

### ***Modifications Involving New Acquisition Actions***

Before initiating a modification, it is necessary to determine that it is within the scope of the existing contract rather than a "new acquisition" outside the scope of the contract. Comparing the original work required under the contract with the proposed change will normally indicate whether the change is within the scope of the contract. A "new acquisition" must be conducted as a separate acquisition action.

If a new acquisition is involved and the Government decides to contract with a contractor who is already providing the

desired services (under an existing contract), the new requirement may be covered by a new contract or by a modification to the existing one. Regardless, this new (or continuing) requirement must be treated as a new acquisition and processed as such. This means, for example, that a synopsis must be published in the Commerce Business Daily and a JOFOC prepared, as necessary.

When a new acquisition is contemplated, it should be subject to competition; it cannot be awarded automatically to a contractor simply because the contractor has a current contract with Treasury. Advance planning is critical to ensuring uninterrupted service. Once a contract has expired, it cannot be modified.

### ***Consideration for Contract Modification***

Generally there must be consideration whenever a contract is modified. "Consideration" is the benefit each party confers upon the other for the modification.

Although contract modifications usually result in price increases, they may sometimes result in price reductions or no change in price. The requirement for consideration, as set forth in various decisions of the Comptroller General, is that no officer or employee of the Government may alter a contract to the prejudice of the Government unless the Government receives corresponding, tangible contractual benefits. Thus, there is really no such thing as a "no cost" extension to the period of performance of a contract. If the Government allows a longer period of time for delivery, the "cost"

## PART IV. POST AWARD ADMINISTRATION

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to the Government is its right to delivery of the product or service by the date agreed upon. The law requires the contractor to provide some form of consideration for the Government's giving up of that right.

Certain administrative changes may be made without consideration provided the contractor's rights are not affected (e.g., change in the appropriation data or a change in the paying office). Once a valid contract is executed, no adjustment can be made to its terms merely because it may appear, in retrospect, that either the contractor or the Government had made a "bad bargain."

### *Change Orders*

The contract clause entitled "Changes" distinguishes Government contracts from other contracts by the control over performance vested in one of the contracting parties--the Government.

Unlike contracts in the private sector where performance must conform to pre-agreed terms in the absence of a modification issued by both parties, the "Changes" clause in a Government contract allows the Contracting Officer to alter the work to be performed without the consent of the contractor.

The "Changes" clause provides, in essence, that the Contracting Officer may by written order make any change in the work within the general scope of the contract. Such a change may result also in an appropriate upward or downward equitable adjustment in the contract price, delivery schedule, or time for performance. Additionally, the clause

provides that dispute over the equitable adjustment is a question of fact under the "Disputes" clause, and that nothing in the clause excuses the contractor from proceeding with the contract as changed. This power, unique to Government acquisition, allows the Contracting Officer to alter performance without unnecessary interruption and to subsequently determine the appropriate contract price adjustment.

### *Constructive Changes*

A "constructive change" arises whenever, by informal action or inaction of the Government, the situation of the contractor is so altered as to have the same effect as though enacted by a written order. The term is derived from the verb "to construe"--not from "to construct." Thus, the constructive change is a situation that can be construed as having the effect of changing the contract pursuant to a legitimate clause.

If a specification is defective in such a way that reasonable review prior to preparation of a bid or proposal would not disclose the defect (i.e., the defect is latent), this has the effect of making the work more difficult for the contractor than is reasonably expected. Adding a work requirement in this accidental manner is tantamount to making a change to the specifications. It leads to an obligation on the part of the Government to make an equitable adjustment in a fashion similar to that which would be made under the Changes clause. This general area includes cases where performance is completely impossible.

## PART IV. POST AWARD ADMINISTRATION

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If, during the course of contract performance, questions arise concerning the meaning of the specifications (or other terms of the contract), the contractor is generally required to inquire of the Government as to the meaning. The Government's interpretation may differ from the contractor's. Under the Disputes clause, the contractor must comply with any "final decision" of the Contracting Officer. If a contractor disagrees with the final decision of the Contracting Officer, it may appeal to the agency board of contract appeals or the United States Court of Federal Claims. If it is determined that the Government had required more than a reasonable reading of the specifications would require, then the contractor is entitled to an adjustment.

Overly strict inspection is closely related to erroneous interpretation of specifications. Presume that a delivery has been made. The COTR, in the role of inspector, rejects the items and requires certain corrections. The contractor then makes those corrections. If the contractor later makes a claim for additional work, and it is determined that the initial delivery was not defective, the adjustment will be under the principles of constructive change.

If the Government causes a delay for the contractor but then insists on having the original delivery schedule met, this is a constructive acceleration. Time should have been added for performance.

Finally, there are the cases of improper technical direction, usually from the COTR. The difference between improper technical

direction and overly strict inspection or erroneous interpretation of specifications, is that the error occurs because the COTR either does not bother determining the limits of his/her authority, or deliberately ignores such limits.

### *How to Avoid Constructive Changes*

Careful preparation of initial contracts (removing ambiguities or inconsistencies from the specifications) is the first step in avoiding constructive change. This includes careful drafting of any modification. The Government often does not consider the magnitude of the effect a modification will have on the contractor. For example, in negotiating an equitable adjustment, if the Government does not allow the contractor enough additional time to perform, this creates a constructive change for which an adjustment will become due.

The second step in avoiding constructive changes is for the COTR to know what the contract requires. Both erroneous interpretation of specifications and overly strict inspection tend to result from a failure by the COTR to read the contract carefully. When decisions are made based on what "everybody" knows the specifications ought to say rather than on what they really do say, claims frequently result.

The third step is for the COTR to keep proper records. For example, if, during an interim inspection, the COTR tells the contractor that some aspect of performance is inadequate, the aspect should be explained in writing, with a copy transmitted to the

## PART IV. POST AWARD ADMINISTRATION

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contractor through the Contracting Officer.

Documentation of final inspection is also important. The COTR must outline in writing the specific problems that make a contractor's product unacceptable. The COTR should not make general comments about what would correct problems as a contractor may mistake this as specific direction for correcting the problems. Good documentation can eliminate this sort of misunderstanding.

### ***Value Engineering Change Proposals***

Value engineering (VE) clauses may be used in contracts such as those for large IT systems and major production equipment when it is important to promote cost efficiencies for both contractors and the Government. (See "Value Engineering" in the Glossary.)

Under the value engineering procedures in FAR 48, a contractor may voluntarily suggest methods for performing more economically and will share in any resulting savings, if the Government accepts a contractor's proposal. If the Government mandates a specific VE program effort by a contractor, it will be included as a separately priced item of work in the contract.

The Contracting Officer will forward contractor-submitted VE change proposals to technical staff for review and analysis to determine feasibility, usefulness, and adequacy. If a proposal will result in a reduction of the overall projected cost without impairing essential functions or

characteristics, within other parameters stipulated in FAR 48.001 (b), the Contracting Officer will effect the change by modifying the contract in accordance with the value engineering clause and the procedures at TAPR 1048.103.

### ***SUBCONTRACTS***

Subcontracting is defined as contracting between a prime contractor and one or more other organizations or individuals to obtain supplies or services to carry out the objective of the prime contract. The prime contractor, not the Government, is responsible for administering subcontracts. When the Government buys the services of a contractor it is buying, among other services, its management services. It is the responsibility of the prime contractor in an acquisition to ensure the performance of the subcontractor. There exists no "Privity of Contract" (see the glossary) between the Government and subcontractors. Nevertheless, there are a number of monitoring and contract administration functions a COTR performs that promote effective subcontract operations.

### ***Action Prior to Award***

If extensive subcontracting may be required in the performance of a contract, the Contracting Officer follows the guidance at FAR Subpart 44.201 and includes applicable clauses in the solicitation and contract. The Contracting Officer will evaluate, with the COTR's assistance, a proposed subcontract submitted with an offeror's proposal. The

## PART IV. POST AWARD ADMINISTRATION

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Contracting Officer then either consents to the subcontract or rejects the proposal to subcontract.

In reviewing the proposed subcontracts, the COTR assists in the Contracting Officer's analysis by considering the following questions from FAR Subpart 44.202:

- o Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any?
- o Is the subcontract for special test equipment or facilities that are available from Government sources?
- o Is the selection of the particular supplies, equipment, or services technically justified?
- o Has adequate consideration been obtained for any proposed subcontract that will involve the use of government-furnished facilities?
- o Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

In reviewing the proposed subcontract, the COTR should be especially careful if:

- o the prime contractor has had previous subcontracting problems;
- o there has been little or no competition for the supplies or services;

- o there is a close relationship or ownership affiliation between the prime contractor and the proposed subcontractor; and

- o the subcontract is to be placed on a cost-reimbursement, time and materials, or labor hour basis.

### ***Action After Award***

After the subcontract has been let, it is the prime contractor's responsibility to manage. But here again, the COTR has certain responsibilities to ensure that the prime contractor is managing it adequately. The COTR can review the effectiveness of the contractor's subcontract administration function by making observations of such things as the support, direction, and timeliness of actions provided by the contractor to subcontractors.

The COTR will help the Contracting Officer in verifying that subcontractors are not being restricted in the furnishing of commercial items or commercial components. Subcontractors shall, to the maximum extent practicable:

- o Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government;

- o Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or supplies that are furnishing commercial items or commercial components any clause, except those--



## PART IV. POST AWARD ADMINISTRATION

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- Required to implement provision of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

- Determined to be consistent with customary commercial practice for the item being acquired.

An important area to be covered in any review of subcontract administration is the contractor's system for making subcontract changes. Procedures must provide not only for timely processing of changes but also for prompt notification of all parties concerned, including the Government.

### ***OPTIONS***

An option is a unilateral right of the Government, for a specified time, to purchase additional supplies or services listed in the contract, or to elect to extend the term of the contract. An option may call for delivery of the option quantity within the initial contract period or may call for delivery of the option quantity subsequent to the initial contract period.

Options are most often used in situations where the Government is indefinite as to the quantities it requires. A contract with an option clause will allow for the purchase of a specified quantity, with the Government retaining the right to purchase a specified further quantity at a set price at some later time, or at a cost to be determined later.

Option clauses invariably contain a statement to the effect that the Government will notify the contractor within some specified time (e.g., 60 days before the expiration date of the contract) of its intent to exercise the option. The decision to acquire the option quantity is primarily the COTR's. In order to avoid the possibility of losing the Government's right to exercise the option, the COTR must notify the Contracting Officer of this decision in sufficient time to allow the Contracting Officer to put the contractor on notice within the time specified in the contract.

It is necessary to revalidate the requirements, as well as to analyze the current market to establish that exercising the option is in the Government's best interest. The COTR plays a significant role in these functions.

The COTR is also responsible for ensuring that the funds necessary to pay for the option quantity are available.

### ***SECURITY***

If contract performance involves access to classified information by contractor personnel, a security clause will be included in the contract. The COTR will be responsible for administering the security aspect of the contract in accordance with the Department of Treasury, Office of Security Manual, TD P 71-10. (See also PART III, *ACQUISITION PLANNING*.)

#### ***Access to Classified Information***

## PART IV. POST AWARD ADMINISTRATION

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The COTR determines during pre-award whether access to classified information is necessary for the contractor to perform, and ensures that the DD Form 254 is properly completed and distributed. In monitoring the contract, if the original Form 254 did not cover the full span of the contract, or, if the contract is modified in such a way that the security requirements are changed, the COTR shall ensure that the form is updated prior to its anniversary date.

### ***Request for Classified Documents***

The COTR will evaluate all requests for classified documents. Requests received by the Contracting Officer will be forwarded to the COTR for certification of the need-to-know and transmittal to the Treasury or bureau security office for approval.

### ***Request for Classified Facility Access***

The COTR shall review all requests for classified facility access by contractors who do not already have a facility security clearance, and when the situation requires access, provide the requests directly to the bureau security office. All requests must include the names of the personnel actually involved in the classified aspects of the contract and the required security classification level, the proposal or contract number, and title of project requiring the access, and reason(s) for the access.

COTRs shall also ensure that visit authorization requests are received from contractors in advance of contractor visits to bureau facilities.

### ***Security Identification Badges***

The COTR is responsible for the issuance of security badges to contractor personnel; therefore, he or she is required to notify the applicable security office of the contract's expiration. Notification shall be in writing, stating the date of contract completion, the company's name and contract number, and the employee no longer needing access. A copy of the memo shall be forwarded to the Contracting Officer. The COTR shall ensure that all badges are returned and/or canceled.

### ***GOVERNMENT PROPERTY***

When Government property is required for performance, the COTR must submit to the Contracting Officer a written request for delivery to the contractor. The request will be forwarded to the Contracting Officer regardless of the source of the property. The Contracting Officer will normally approve transportation costs as a reimbursable item under cost-reimbursement contracts on which the property is assigned. In these cases, shipment will be authorized on a commercial bill of lading.

Each request for Government-furnished property will identify the items to be furnished, serial number, date required, the name and address of the person to receive the property, the name of the contractor, contract number, and the contractor's need for the equipment in performance of the contract.

Authorization for delivery of Government-

## PART IV. POST AWARD ADMINISTRATION

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furnished property shall be made only by the Contracting Officer.

The COTR will be responsible for furnishing recommendations to the Contracting Officer for the disposition of Government-furnished property in the hands of the contractor. Before recommending storage for potential future use, consideration will be given to packaging, packing, transportation, and storage.

There may be occasions under cost-reimbursement contracts wherein the contractor must acquire property for use in completing the contract. In such situations, the COTR is required to ensure that such property is used for the intended purpose and, if applicable, is returned to the Government in reasonable condition upon contract completion. In some cases, the contractor may purchase the equipment/property, and therefore title remains with the contractor unless the contract states otherwise.

The contractor may be authorized to use the property on other Government contracts and on commercial work. The contractor is usually charged rent when Government property is used on commercial work. The rent payments received from the contractor should be subjected to periodic audits by the contract auditor.

The contractor is responsible and accountable for all Government property in their possession. Therefore, the contractor must keep accurate records of that property. The COTR shall verify the contractor's

inventory of Government property periodically as directed by the Contracting Officer.

Unless summary records are authorized, the contractor's records shall provide the following information, regardless of value:

- o The name, description, and National Stock Number (if furnished by the Government);
- o Quantity received (or fabricated), issued, and on hand;
- o Unit price and unit of measure;
- o Contract number or equivalent code designation;
- o Location of the property;
- o Disposition; and
- o Posting reference and date of transaction.

Summary records are normally maintained for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit.

### ***Reports of Government Property***

The contractor shall report annually the total acquisition cost of Government property. This also includes property being used by subcontractors. This information must be provided to the Contracting Officer with

## PART IV. POST AWARD ADMINISTRATION

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comments from the COTR.

### ***TRAVEL BY CONTRACTORS***

The COTR will assure that travel to be performed is authorized in the contract, with due consideration for any limitation specified therein. The COTR will also assure that, whenever possible, Government cost-reimbursement contractors use GSA contract airlines, under the conditions established by the Federal Travel Regulations, as prescribed by GSA. In evaluating contractor requests for travel, at a minimum, the COTR will assure that:

- o Travel proposed is essential to the effective performance of the contract;
- o The contractor and any subcontractor have screened reimbursement travel to avoid nonessential participation in conferences, meetings, or conventions;
- o The contractor and any subcontractors are limiting the mode of travel to the most economical method and are relating travel to production time; and
- o When unable to use any GSA contractor airline, the contractor and any subcontractors are making reservations for air travel sufficiently in advance to obtain coach rates.
- o The contractor and any subcontractors are limiting the cost of travel to Federal Per Diem Rates.

### ***CONTRACT CLOSEOUT***

Contract closeout actions are primarily the responsibility of the Contracting Officer, but the COTR may be required to certify that all services have been rendered in a satisfactory manner and all deliverables are complete and acceptable. The COTR's assistance is indispensable when disputes, litigation, patent and copyright problems are involved.

Upon completion of the contract, the Contracting Officer must ensure or determine, as applicable, that:

- o all services have been rendered;
- o all supplies have been delivered and accepted;
- o required evaluations of contractor performance have been completed and documented;
- o all payments and collections have been made;
- o releases from liabilities, obligations, and claims have been obtained from the contractor;
- o assignments of refunds, credits, etc., have been executed by the contractor;
- o all administrative actions have been accomplished, including the settlement of disputes, protests, and litigation; determination of final overhead rates; release

## PART IV. POST AWARD ADMINISTRATION

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of funds; and disposal of property; etc., and

- o the file is properly documented.

Contract closeout is necessary to ensure that Government funds were properly expended, excess funds are deobligated, Government property, if used, is properly returned, contractor releases from further claims are obtained and the contractor's performance is rated for future Government use. Failing to complete contract closeout in a timely manner increases the staff time needed to complete the closeouts because the passage of time makes it more difficult to obtain the necessary information.

## PART V. STANDARDS OF CONDUCT

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### **GENERAL**

It is the individual responsibility of the COTR to refrain from releasing to any individual, business establishment or its representatives any information concerning proposed procurements that would prejudice any prospective offeror. Such information will be released to all potential contractors as nearly simultaneously as possible, and only through the Contracting Officer, so that one vendor may not be given an unfair advantage over another.

The Contracting Officer is the only person authorized to enter into contracts and sign on behalf of the Government. Unauthorized discussion and commitments may give the Department the appearance of not acting in good faith. Unauthorized personnel shall refrain from making any commitment or promises relating to award of contracts and shall make no representation which would be construed as such a commitment. The COTR should not, under any circumstances, advise a prospective contractor that an attempt will be made to influence the Contracting Officer in order to give the firm preferential treatment in the award of future contracts.

In accordance with the Department's "Minimum Standard of Conduct" (Title 31 CFR Part O), the COTR is prohibited from soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other item of monetary value from a person who has, or is seeking to obtain, a contract with the Department of the Treasury. FAR 3.104 provides details

regarding violations such as offers or acceptance of bribes, activities related to post-employment by former Government employees, and the release of information related to procurements and other contractor information. The COTR should carefully review these provisions and direct any questions in this matter to the Contracting Officer or the appropriate Ethics Officer.

In any issues involving conduct, one point is most important to remember. The APPEARANCE of misconduct may be damaging even if there is no actual misconduct. For example, if a COTR is seen having lunch with a prospective bidder, the APPEARANCE of favoritism exists; whether the contractor paid for the lunch or not. Always keep in mind that your behavior is being watched, and any APPEARANCE of unethical behavior is as damaging as the actual deed.

The rules applying to Standards of Conduct can often be confusing; WHEN IN DOUBT, FIND OUT. If you have any questions or concerns, be sure to contact your Bureau Ethics Officer or Contracting Officer as soon as a problem arises.

### **CONFLICT OF INTEREST**

In acquisition matters, this means that a Government employee having a financial interest in one or more offerors responding to a request for proposals would be prohibited from engaging in decisions, approvals, disapprovals, recommendations, and investigations; providing advice; or

## PART V. STANDARDS OF CONDUCT

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making any other significant effort regarding the acquisition process. This includes participating in the development of draft specifications or Work Statement for acquisitions when the employee expects a company in which he or she has a financial interest to submit a proposal.

Generally, employees who will have a conflict of interest, as described above, must disqualify themselves from participating in the acquisition process. However, this discussion of conflict of interest is only a general treatment of a fairly complex subject. Government employees who are required to participate in a particular acquisition that may present them with a conflict of interest should refer the matter to either the Contracting Officer or appropriate Ethics Official.

### ***PROTECTING THE INTEGRITY OF THE ACQUISITION PROCESS***

The term "integrity of the acquisition process," in this instance, means allowing private sector firms to compete for the Government's business on a scrupulously fair basis. The emphasis here is on the word "fair." Not only is fairness a prerequisite in Government acquisition due to the Government's unique position as representative of the American people, but fairness also helps ensure that the Government will obtain its supplies and services at the best price available.

Government personnel who are associated with the acquisition process have a

responsibility to protect its integrity by maintaining fairness in the Government's treatment of all vendors. There are numerous points within the acquisition process where the potential to lose this fairness is high. For example:

- o *Presolicitation.* Allowing a vendor or vendors access to information on a particular acquisition (especially the specification or work statement) before such information is available to the business community at large may give the vendor(s) receiving the information an unfair advantage over others.

- o *Specifications.* Intentionally writing an unnecessarily restrictive specification or work statement that would effectively exclude the products or services of a vendor and/or increase the prospects for award to another vendor is an obviously unfair practice. Not only does this give advantage to one or more vendors over others, but it also restricts competition and makes it more likely that the Government will ultimately pay a higher price.

- o *Confidentiality of proposals.* From time to time, requests for information are received concerning proposals, before a contract is awarded. All information concerning the proposals, including their number and submitters' identities, must be held in strict confidence. Should this information become available to one or more offerors, it could put other offeror(s) at a distinct advantage. The release of this information is coordinated by the Contracting office, in compliance with

## PART V. STANDARDS OF CONDUCT

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Treasury implementing regulations, TAPR 1024.2. Proprietary data, trade secrets, and other confidential commercial information may be exempt from disclosure even after award.

### ***Procurement Integrity***

Due to changes in procurement integrity law, differing time periods for employment and participation in procurement activities are affected by different rules.

As with previous rulings though, all procurement officials, before serving in that capacity, must certify that they are aware of the statutory prohibitions, will not violate them, and will report violators to the Contracting Officer. This rule applies to COTRs.

The Department's procurement ethics training program is described in TD P 76-01.G and in correspondence issued by the Office of Procurement. Additional procurement integrity information is found in TAPR Part 1003.104.

Consult your Contracting Officer and Ethics Officer for specific questions or guidance in any of the above areas of conduct.

### ***SUMMARY***

This handbook was created to assist you in your job as a COTR. It will not provide all the answers to the questions which may arise during the procurement process. Good contract performance requires your diligence

and good judgement, along with cooperation with your Contracting Officer.

To assist you, a few pages of Do's and Don'ts are provided as Attachment I. As stated before, if you have any questions, coordinate them with the Contracting Officer as soon as they arise.

**Good Luck!**



## ***APPENDICES***

- Attachment A*** - COTR Nomination Form - **SAMPLE**
- Attachment B*** - COTR/Sub-COTR Designation Letter/Memo - **SAMPLES**
- Attachment C*** - COTR Replacement Letter - **SAMPLE**
- Attachment D*** - COTR Certificate of Appointment
- Attachment E*** - Contractor's Progress Report - **SAMPLE**
- Attachment F*** - Contractor Performance Report - **SAMPLE**
- Attachment G*** - Justification for Other Than Full and Open Competition (JOFOC)  
TDF 76-01.6 (11-96)
- Attachment H*** - Independent Government Cost Estimate Guide
- Attachment I*** - Dos and Don'ts for COTRs

S A M P L E

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)  
NOMINATION FORM

Name \_\_\_\_\_  
Project Name \_\_\_\_\_

Telephone No. \_\_\_\_\_  
Contract No. \_\_\_\_\_

**TRAINING QUALIFICATIONS:**

**Course Title**

**Dates Attended/No. Course Hours**

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**TECHNICAL QUALIFICATIONS/EXPERIENCE:**

List technical qualifications as well as types of contracts administered (indicate supply or service, contract type, e.g., cost-reimbursement, fixed price)

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Agency or division where obtained \_\_\_\_\_  
Division Director \_\_\_\_\_  
Date \_\_\_\_\_  
Signature \_\_\_\_\_

**CONTRACT ADMINISTRATION USE ONLY:**

**Recommendation for Designation:**

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( ) Concurrence

( ) Non Concurrence

**Notes**

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**S A M P L E**

**COTR DESIGNATION LETTER**

Dear \_\_\_\_\_:

In accordance with the procurement policies and procedures contained in the Treasury Acquisition/Procurement Regulation (TAPR), a Contracting Officer's Technical Representative (COTR) shall be designated to monitor contractor performance and other contract administration duties associated with the award of a formal contract.

You are hereby designated as the COTR in connection with the technical phases of Contract No. \_\_\_\_\_.

**A.     DESIGNATION OF COTR**

The COTR is designated in writing in the contract schedule and by individual letter. This designation will set forth in detail the full extent of the COTR's authority and limitations therein. The designation does not change or supersede the established line of authority and/or responsibility of any organization. Changes in the designated COTR will be made by modification to the contract and letter appointment as the need arises. The appointment as COTR applies to the subject contract only, and shall terminate on completion of the contract.

**B.     SCOPE OF SPECIFIC RESPONSIBILITIES**

1.     Developing the contract specifications or work statement in such a manner as to promote competitive procurement actions;
2.     Coordinating with the program office, actions relating to funding and changes in the scope of work;
3.     Monitoring the contractor's performance of the technical requirements of the contract to assure that performance is strictly within the scope of the contract;
4.     Confirming all significant technical instructions to the contractor;
5.     Assuring that changes in the work or services, and resulting effects on delivery schedule, are formally effected by written modification issued by the Contracting Officer before the contractor proceeds with the changes;

## **ATTACHMENT B**

Page 1-2

6. Assuring prompt review of draft reports and providing approval to the contractor so that distribution of reports can be within the specified completion date of the contract, and assuring prompt inspection and acceptance or rejection of other deliverable items;
7. Maintaining a contract working file;
8. Referring to the Contracting Officer those matters, other than purely technical problems, which may affect the contract;
9. Informing the Contracting Officer when a contractor is known to be behind schedule, with the reasons therefore, and coordinating with the Contracting Officer corrective action necessary to restore the contract schedule;
10. Furnishing to the Contracting Officer a copy of Government contractor conference reports and correspondence and coordinating with the Contracting Officer on the content of any contractually significant correspondence addressed to the contractor. These steps will be taken to prevent possible misunderstanding or the creation of a condition that may later be made the basis of a claim. All correspondence addressed to the contractor will be signed by the Contracting Officer;
11. Requesting the Contracting Officer to authorize Government-furnished property and, when requested by the Contracting Officer, furnishing disposition advice on Government-furnished property or contractor-acquired property;
12. Monitoring financial management controls;
13. Furnishing the Contracting Officer a notice of satisfactory or unsatisfactory completion;
14. Reporting to the Contracting Officer and Legal Counsel any suspected procurement frauds, bribery, conflicts of interest, and other improper conduct;
15. Reviewing and submitting recommendations to the Contracting Officer on subcontracts with respect to their relationship with the prime contracts;
16. Assuring that the contractor has a current facility clearance, as well as other appropriate clearances for contractor personnel to have access to classified material, as soon as it is determined that access to classified material will be required;

17. Recommending approval or disapproval to the Contracting Officer, concerning a contractor's requests for public release of information regarding work being performed under the contract.
18. Notifying the Contracting Officer of inventions by the contractor during the performance of the contract;
19. When required, furnishing the Contracting Officer with a formal request for termination;
20. Evaluating any contractor requests for travel; and
21. Reviewing the contractor's invoices to ensure that they reflect accurately the work completed in accordance with the requirements of the contract, and certifying acceptance.

**C. EXCLUSIONS FROM COTR RESPONSIBILITIES**

The COTR is expressly excluded from performing or being responsible for the following:

1. Making commitments or promises to contractors relating to award of contracts;
2. Writing contract requirements around the product or capacity of one source;
3. Soliciting proposals;
4. Modifying the stated terms of the contract;
5. Issuing instructions to contractors to start or stop work;
6. Approving items of cost not specifically authorized by the contract;
7. Directing changes;
8. Executing supplemental agreements;
9. Rendering a decision on any dispute or question of fact under the Disputes clause of the contract;
10. Taking any action with respect to termination, except to notify the Contracting Officer;

**ATTACHMENT B**

Page 1-4

11. Authorizing delivery or disposition of Government-furnished property not specifically authorized by the contract;
12. Providing guidance to the contractor, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract; and
13. Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement.

Violation of the foregoing may give the appearance that Treasury is not acting in good faith. Commitments made to contractors by other than duly appointed Contracting Officers can result in formal protests by other companies, embarrassment to the Department and Bureau involved, criticism by the General Accounting Office, and possible monetary loss to the individual and the firm involved.

Sincerely,

---

Contracting Officer

Acknowledgment

---

Name

---

Title

---

Date

**S A M P L E**  
**COTR DESIGNATION MEMO**

**MEMORANDUM FOR:**

**FROM:** \_\_\_\_\_, Contracting Officer

**SUBJECT:** Designation of Contracting Officer's Technical Representative (COTR) and Sub-COTRs, for Contract No. \_\_\_\_\_

In accordance with the procurement policies and procedures contained in the Treasury Acquisition/Procurement Regulation (TAPR), a Contracting Officer's Technical Representative (COTR) shall be designated to monitor contractor performance and other contract administration duties associated with the award of a formal contract. Sub-COTRs are also hereby designated for specific aspects of the contract due to the scope and technical complexity of this contract.

You are hereby designated as the COTR or sub-COTR in connection with the technical phases of Contract No. \_\_\_\_\_. The sub-COTRs are the responsibility of, and are responsive to the COTR.

**A. DESIGNATION OF COTR/SUB-COTRs**

The COTR/sub-COTRs are designated in writing in the contract schedule and by individual letter. This designation will set forth in detail the full extent of the COTR/sub-COTR's authority and limitations therein. The designation does not change or supersede the established line of authority and/or responsibility of any organization. Changes in the designated COTR/sub-COTRs will be made by modification to the contract and letter appointment as the need arises. This designation appointment as COTR/sub-COTR applies to the subject contract only, and shall terminate on completion of the contract, unless sooner terminated in writing by the Contracting Officer or his/her successor, or by reason of your reassignment.

**B. SCOPE OF SPECIFIC RESPONSIBILITIES**

This designation is specifically limited to the responsibilities and authority contained herein and does not serve to confer authority to grant any deviation from contract provisions. Extreme care should be taken by the COTR/sub-COTRs in the preparation of instruction to the contractor to ensure that subject matter does not alter the terms and conditions of the contract.

Your duties include the following:

1. Developing the contract specifications or work statement in such a manner as to promote competitive procurement actions;
2. Coordinating with the appropriate office actions relating to funding and changes in scope of work;
3. Monitoring the contractor's performance of the technical requirements of the contract to assure that performance is strictly within the scope of the contract;
4. Confirming all significant technical instructions to the contractor;
5. Assuring that changes in the work or services, and resulting effects of delivery schedule, are formally effected by written modification issued by the Contracting Officer before the contractor proceeds with the changes;
6. Assuring prompt review of draft reports and providing approval to the contractor so that distribution of the reports can be within the specified completion date of the contract, and assuring that adequate records of the inspection and testing period are kept so that acceptance can be made and the contractor paid. Acceptance shall be made by the COTR or his/her designated representative(s); rejections, if necessary, will be made by the Contracting Officer;
7. Maintaining a contract working file;
8. Referring to the Contracting Office matters which may affect the contract;
9. Informing the Contracting Officer when the contractor is known to be behind schedule, with the reasons therefore, and coordinating with the Contracting Officer corrective action necessary to restore the contract schedule;
10. Furnishing the Contracting Officer a copy of Government/contractor conference reports and correspondence and coordinating with the Contracting Officer on the content of any contractually significant correspondence addressed to the Contractor in order to prevent possible misunderstanding or the creation of a condition that may be made later be made the basis of a claim. All correspondence addressed to the contractor will be signed by the Contracting Officer;
11. Requesting the Contracting Officer to authorize Government-furnished property and, when requested by the Contracting Officer, furnishing disposition advice on the Government-furnished property or contractor-acquired property;



12. Monitoring financial management controls;
13. Furnishing the Contracting Officer a notice of satisfactory or unsatisfactory completion;
14. Reporting to the Contracting Officer and Legal Counsel suspected procurement frauds, bribery, conflicts of interest, and other improper conduct;
15. Reviewing and submitting recommendations to the Contracting Officer on subcontracts with respect to their relationship with the prime contract/
16. Ensuring that the contractor submits, at least 5 workdays before the starting date of the contract, a Contract Personnel Access Application Form, OF-7111.6, and an Authority for Release of Information Form, TD F 62.94.1, for each employee of the firm who may visit work sites at Treasury-controlled leased space during the period of this contract and for all employees who will have access to the Treasury facilities in performance of the contract work;
17. Forwarding to the Contracting Officer, the contractor's requests for public release of information regarding work being performed under the contract;
18. Notifying the Contracting Officer of inventions by the contractor during the performance of the contract;
19. When required, furnishing the Contracting Officer a formal request for termination; and
20. Evaluating contractor's invoices to ensure that they reflect accurately the work completed in accordance with the requirements of the contract, and certifying acceptance.

**C. EXCLUSIONS FROM COTR/SUB-COTR RESPONSIBILITIES**

The COTR/Sub-COTRs are expressly excluded from performing or being responsible for the following:

1. Making commitments or promises to contractors relating to award of contracts;
2. Writing contract requirements around the product or capacity of one source;
3. Soliciting proposals;

4. Modifying the stated terms of the contract;
5. Issuing instruction to contractors to start or stop work;
6. Approving items of cost not specifically authorized by the contract;
7. Directing changes;
8. Executing supplemental agreements;
9. Rendering a decision on any dispute or question of fact under the Disputes clause of the contract;
10. Taking any action with respect to termination, except to notify the Contracting Officer;
11. Authorizing delivery or disposition of Government-furnished property not specifically authorized by the contract;
12. Providing guidance to contractors, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract; and
13. Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement.

Violation of the foregoing may give the appearance that Treasury is not acting in good faith. Commitments made to contractors by other than duly appointed Contracting Officers can result in formal protests by other companies, embarrassment to the Department and Bureau involved, criticism by the General Accounting Office, and possible monetary loss to the individual and the firm involved.

Acknowledgment

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Name

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Title

---

Date

**TERMINATION OF DESIGNATION**

THIS DESIGNATION IS HEREBY TERMINATED EFFECTIVE AS OF \_\_\_\_\_.

\_\_\_\_\_  
CONTRACTING OFFICER'S SIGNATURE

\_\_\_\_\_  
DATE

RECEIPT OF TERMINATION OF DESIGNATION AS COTR/SUB-COTR IS HEREBY  
ACKNOWLEDGED:

\_\_\_\_\_  
COTR/SUB-COTR'S SIGNATURE

\_\_\_\_\_  
DATE

**ATTACHMENT C**

**S A M P L E**  
**COTR REPLACEMENT LETTER**

Dear \_\_\_\_\_,

Please be advised that \_\_\_\_\_ of the \_\_\_\_\_  
has been assigned the COTR's responsibilities previously performed by \_\_\_\_\_  
on Contract No. \_\_\_\_\_. Please coordinate all technical matters with  
\_\_\_\_\_, telephone number \_\_\_\_\_.

If you have any questions regarding this or any other administrative matters, please contact  
\_\_\_\_\_, telephone number \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Office of Contracts and Procurement

cc:

Contract File

COTR, \_\_\_\_\_ w/Statement of COTR's Responsibilities

Previous COTR, \_\_\_\_\_

Program Division Office, \_\_\_\_\_

# ***CERTIFICATE OF APPOINTMENT***

Under authority vested in the undersigned and  
in conformance with Part 1001 of the Treasury Acquisition/Procurement Regulation

---

is appointed

*Contracting Officer's Technical Representative*  
*for*  
*Department of the Treasury*

---

(Bureau)

Based on successful completion of a 40-hour course in COTR training  
including 4-hours of Procurement Ethics.

Appointment effective this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ and shall  
expire three years from this date unless terminated.

---

Bureau Chief Procurement Officer

---

Bureau Head or Designee

No.

11/11/11

**S A M P L E**  
**CONTRACTOR'S PROGRESS REPORT**

Contractor  
\_\_\_\_\_

Contract Number  
\_\_\_\_\_

Contracting Officer's  
Technical Representative  
\_\_\_\_\_

Report Frequency  
\_\_\_\_\_ Quarterly \_\_\_\_\_ Final

---

1. HOW WOULD YOU DESCRIBE THE CONTRACTOR'S PERFORMANCE TO DATE?

\_\_\_\_\_ A-Satisfactory                      \_\_\_\_\_ B-Marginal                      \_\_\_\_\_ C- Unsatisfactory

If "B" or "C" is checked in item 1 above, provide a brief description of your findings:

---

2. WERE DELIVERABLES RECEIVED ON TIME AND IN GOOD CONDITION:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No - Give a brief description of facts:

---

3. WERE THE CONTRACTOR'S SERVICES/PRODUCT IN ACCORDANCE WITH THE SCOPE OF WORK:

\_\_\_\_\_ Yes                      \_\_\_\_\_ No - Describe any deficiencies:

---

4. HAVE YOU, AS COTR, PROVIDED TECHNICAL ASSISTANCE TO THE CONTRACTOR?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No - Describe why not:

---

5. STATE ANY OTHER SIGNIFICANT ISSUES WHICH SHOULD BE BROUGHT TO THE CONTRACTING OFFICER'S ATTENTION:

---

NOTE: ATTACH COPIES OF ALL DOCUMENTATION OF CONTRACTOR AND COTR DISCUSSIONS AND FORWARD WITH THIS REPORT.

SIGNATURE OF COTR \_\_\_\_\_

DATE \_\_\_\_\_

<b>CONTRACTOR PERFORMANCE REPORT</b> [ ] Final [ ] Interim - period Report: From _____ To _____													
1. Contractor name and Address: (Identify Division)	2. Contract Number: _____ 3. Contract Value (Base Plus Options): _____ 4. Contract Award Date: _____ Contract Completion Date: _____												
5. Type of Contract: (Check all that apply) -- [ ] FP [ ] FPI [ ] FP-EPA [ ] Award Fee [ ] CPFF - Completion [ ] CPFF - Term [ ] CPIF [ ] CPAF [ ] ID/IQ [ ] BOA [ ] Requirements [ ] Labor Hour [ ] T&M [ ] SBSA 8(a) [ ] SBIR [ ] Sealed Bid [ ] Negotiated [ ] Competitive [ ] Non-Competitive													
6. Description of Requirement:													
7. Ratings. Summarize contractor performance and circle in the column on the right the number which corresponds to the performance rating for each rating category. Please see page three for explanation of rating scale.													
Quality	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Comments</td> <td style="width: 40%; text-align: center;">0</td> </tr> <tr><td></td><td style="text-align: center;">1</td></tr> <tr><td></td><td style="text-align: center;">2</td></tr> <tr><td></td><td style="text-align: center;">3</td></tr> <tr><td></td><td style="text-align: center;">4</td></tr> <tr><td></td><td style="text-align: center;">+</td></tr> </table>	Comments	0		1		2		3		4		+
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Cost Control	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Comments</td> <td style="width: 40%; text-align: center;">0</td> </tr> <tr><td></td><td style="text-align: center;">1</td></tr> <tr><td></td><td style="text-align: center;">2</td></tr> <tr><td></td><td style="text-align: center;">3</td></tr> <tr><td></td><td style="text-align: center;">4</td></tr> <tr><td></td><td style="text-align: center;">+</td></tr> </table>	Comments	0		1		2		3		4		+
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Timeliness of Performance	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Comments</td> <td style="width: 40%; text-align: center;">0</td> </tr> <tr><td></td><td style="text-align: center;">1</td></tr> <tr><td></td><td style="text-align: center;">2</td></tr> <tr><td></td><td style="text-align: center;">3</td></tr> <tr><td></td><td style="text-align: center;">4</td></tr> <tr><td></td><td style="text-align: center;">+</td></tr> </table>	Comments	0		1		2		3		4		+
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Business Relations	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Comments</td> <td style="width: 40%; text-align: center;">0</td> </tr> <tr><td></td><td style="text-align: center;">1</td></tr> <tr><td></td><td style="text-align: center;">2</td></tr> <tr><td></td><td style="text-align: center;">3</td></tr> <tr><td></td><td style="text-align: center;">4</td></tr> <tr><td></td><td style="text-align: center;">+</td></tr> </table>	Comments	0		1		2		3		4		+
Comments	0												
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Customer Satisfaction (End Users)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Comments</td> <td style="width: 40%; text-align: center;">0</td> </tr> <tr><td></td><td style="text-align: center;">1</td></tr> <tr><td></td><td style="text-align: center;">2</td></tr> <tr><td></td><td style="text-align: center;">3</td></tr> <tr><td></td><td style="text-align: center;">4</td></tr> <tr><td></td><td style="text-align: center;">+</td></tr> </table>	Comments	0		1		2		3		4		+
Comments	0												
	1												
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	3												
	4												
	+												
Mean Score (Add the ratings above and divide by number of areas rated)													



8. Key Personnel			
Project Manager Name _____		Employment Dates _____	
Comments/Rating _____			
Name _____		Employment Dates _____	
Comments/Rating _____			
Name _____		Employment Dates _____	
Comments/Rating _____			
Name _____		Employment Dates _____	
Comments/Rating _____			
Name _____		Employment Dates _____	
Comments/Rating _____			
9. Would you select this firm again? Please explain.			
10. Program Officer Name		Signature	
Phone/FAX/Internet Address		Date	
11. Contractor's Review. Were comments, rebuttals, or additional information provided? [ ] No [ ] yes. Please attach comments.			
12. Contractor Name		Signature	
Phone/FAX/Internet Address		Date	
13. Agency Review. Were contractor comments reviewed at a level above the contracting officer? [ ] No [ ] Yes. Please attach comments. Number of pages _____			
14. Final Ratings. Re-assess the Block 7 ratings based on contractor comments and agency review. Revise block 7 rating, if appropriate.			
Quality _____	Cost Control _____	Timeliness _____	Customer Satisfaction CA Team _____ End User _____
Mean Score (Add the ratings above and divide by number of areas rated)			
15. Contracting Officer Name		Signature	
Phone/FAX/Internet Address		Date	

## RATING GUIDELINES

Summarize contractor performance in each of the rating areas. Assign each area a rating of 0 (Unsatisfactory), 1 (Poor), 2 (Fair), 3 (Good), 4 (Excellent), or ++ (Plus). Use the following instructions as guidance in making these evaluations. Ensure that this assessment is consistent with any other Agency assessments made (i.e., for payment of fee purposes).

	Quality of Product/Service	Cost Control	Timeliness of Performance	Business Relations
	<ul style="list-style-type: none"> <li>-Compliance with contract requirements</li> <li>-Accuracy of reports</li> <li>-Appropriateness of personnel</li> <li>-Technical excellence</li> </ul>	<ul style="list-style-type: none"> <li>-Within budget (over /under target costs)</li> <li>-Current, accurate, and complete billings</li> <li>-Relationship of negotiated costs to actuals</li> <li>-Cost efficiencies</li> <li>-Change orders issue</li> </ul>	<ul style="list-style-type: none"> <li>-Met interim milestones</li> <li>-Reliable</li> <li>-Responsive to technical direction</li> <li>-Completed on time, including wrap-up and contract administration</li> <li>-No liquidated damages assessed</li> </ul>	<ul style="list-style-type: none"> <li>-Effective management</li> <li>-Businesslike correspondence</li> <li>-Responsive to contract requirements</li> <li>-Prompt notification of problems</li> <li>-Reasonable/cooperative</li> <li>-Flexible</li> <li>-Pro-active</li> <li>-Effective contractor-recommended solutions</li> <li>-Effective small/small disadvantages business subcontracting program</li> </ul>
0. Unsatisfactory	Nonconformances are compromising the achievement of contract requirements, despite use of Agency resources.	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirement, despite use of Agency resources.	Response to inquiries, technical/service/ administrative issues is not effective and responsive.
1. Poor	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical/service/ administrative issues is marginally effective and responsive.
2. Fair	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical/service/ administrative issues is somewhat effective and responsive.
3. Good	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements	Delays do not impact achievement of contract requirements.	Response to inquiries, technical/service/ administrative issues is usually effective and responsive.
4. Excellent	There are no quality problems.	There are no cost issues.	There are no delays.	Response to inquiries, technical/service/ administrative issues is effective and responsive.
++ PLUS	The contractor has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "Excellent."			

CONTRACTOR PERFORMANCE REPORT INSTRUCTIONS

Block 1: Contractor Name and Address. Identify the specific division being evaluated if there is more than one.

Block 2: Contract number of contract being evaluated.

Block 3: Contract value shall include base plus options. If funding was increased or decreased during the evaluation period, the value in this block should reflect the change.

Block 4: Contract award date and anticipated or anticipated contract completion date.

Block 5: Type of Contract: Check all that apply.

Block 6: Provide a brief description of the work being done under the contract and identify the key performance indicators. This description will allow agencies calling for reference checks to compare statements of work.

Block 7: Circle rating in far right column and provide brief narrative for each of the categories rated. Indicate the contract requirements that were exceeded or were not met by the contractor and by how much. Also calculate the mean score of the ratings.

Block 8: List the names and employment dates of the contractor's key personnel. This will provide a record of how long these managers worked on the contract. IF there were many changes in these managers a second page may be necessary. On the comment/rating line briefly describe the managers performance.

Block 9: If given a choice, please explain why you would or why you would not select the contractor for this contract again.

Block 10: The program office person most familiar with the contractor's performance should sign this block. The rating is a combines program office, contracting officer decision. The contracting officers signature in block 15, signifies concurrence with this rating and the final rating, if revised rating is necessary.

Blocks 11-12: The contractor may provide comments bus must sign block 12 to indicate review of the rating.

Block 13: If the contractor and contracting officer are unable to agree on a final rating, an agency review at a level above the contracting officer is required.

Block 14: Adjust the ratings assigned in block 7, if appropriate, based on any comments, rebuttals, or additional information provided by the contractor and, if necessary, by the agency review. Calculate a mean score of the contractor's performance.

Block 15: The contracting officer's signature certifies concurrence with the initial and final ratings.

**DEPARTMENT OF THE TREASURY**  
**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION**  
**(JOFOC)**

I recommend that the **U.S. DEPARTMENT OF THE TREASURY** use other than full and open competition for the acquisition of the following supplies or services. If this acquisition is to be made with only one source or a limited number of sources, negotiations will be conducted with the indicated proposed supplier(s):

**1. DESCRIPTION OF SUPPLIES OR SERVICES**

**2. REQUISITION NO.**

**4. NAME(S) OF PROPOSED SOURCE(S)**

**3. COST ESTIMATE**

**REQUESTING OFFICE CERTIFICATION**

I certify that the attached justification is accurate, and contains complete data necessary to support the recommendation for other than full and open competition.

<b>5. REQUESTING OFFICE REPRESENTATIVE</b> <i>(Name &amp; Title)</i>	<i>(Signature)</i>	<i>(Phone No.)</i>	<i>(Date)</i>
--	--------------------	--------------------	---------------

**SMALL BUSINESS CERTIFICATION**

I have conducted a search of vendor files, SF-129s, the Treasury Contractor Profile Data Base on the World Wide Web and SBA's PASS system to locate potential offerors for this procurement. If any were found, a list is attached.

<b>6. SMALL BUSINESS SPECIALIST</b> <i>(Name &amp; Title)</i>	<i>(Signature)</i>	<i>(Phone No.)</i>	<i>(Date)</i>
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**PROCUREMENT OFFICE CERTIFICATION**

► This requirement ☐ will ☐ will not provide for a bridge contract.

I certify that this submission is accurate, and that it contains complete information necessary to enable Approving Officials to make an informed recommendation for approval or disapproval.

<b>7. ASSIGNED CONTRACTING OFFICER</b> <i>(Name)</i>	<i>(Signature)</i>	<i>(Phone No.)</i>	<i>(Date)</i>
--	--------------------	--------------------	---------------

Before requesting this procurement, state one statutory authority for this procurement to be conducted under "other than full and open competition" procedures. Provide narrative justification associated with the respective stated authority in block number 15.

## THE COMPETITION IN CONTRACTING ACT OF 1984 (P.L.98-369)

☐ **41 USC 253(c)(1) - Only one responsible source**  
(8)

This authority shall be used in preference to the Public Interest justification. It shall not be used when any of the other circumstances is applicable. (Explain what makes this contractor the only responsible source: i.e., Does this proposed contractor have facilities or equipment that are specialized and vital to the effort? Is the proposed contractor the only one that can meet critical schedules? Does the proposed contractor have prior experience of a highly specialized nature vital to the effort? Why won't any other product or service satisfy the need? Describe market survey and analysis efforts leading to this conclusion.)

☐ **41 USC 253(c)(2) - Unusual and compelling urgency**  
(9)

This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of contract would result in serious injury, financial or other, to the Government. (Explain why the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless it limited the number of sources. Solicitation from as many potential sources as is practicable under the circumstances is required.)

☐ **41 USC 253(c)(3) - Industrial mobilization; engineering, developmental, or research capability; or expert services**  
(10)

This authority applies when it is necessary to award the contract to a particular source or sources in order (1) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (2) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (3) to acquire the services of an expert for any current or anticipated litigation or dispute. (Does the proposed contractor have facilities and equipment that are vital in the event of a national emergency? Is the proposed contract to maintain properly balanced sources of supply for meeting the requirements of acquisition of programs in the interest of industrial mobilization? Is the proposed contract to create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada?)

☐ **41 USC 253(c)(4) - International agreement**  
(11)

This authority may be used when the acquisition is to be reimbursed by a foreign country that requires the product to be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or, when services are to be performed, or supplies are to be used in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited. (Cite the international agreement or treaty between the United States and the foreign government or international organization that precludes full and open competition. Provide the written directions of the foreign government reimbursing the agency for the cost of the acquisition, which precludes full and open competition.)

☐ **41 USC 253(c)(5) - Authorized or required by statute**  
(12)

This authority may be used when a statute expressly authorizes that the acquisition be made through another agency or from a specified source. (Cite the authority that expressly authorizes that the acquisition be made through another agency or from a specified source, and attach a copy of the statute.) Note: While this statutory exception includes the small disadvantaged business 8(a) set-aside program, a JOFOC is not required for this type of procurement.

☐ **41 USC 253(c)(6) - National Security**  
(13)

This authority may be used for any acquisition when disclosure of the Government's needs would compromise national security. It will not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract. (Explain why the disclosure of the Government's needs would compromise the national security or violate security requirements.)

☐ **41 USC 253(c)(7) - Public Interest**  
(14)

This authority may be used when none of the other authorities above apply. Individual justification, Secretarial approval, and Congressional notification 30 days before award of contract are required.

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**15. JUSTIFICATION *(Attach additional pages if needed)***

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(A) DEMONSTRATION THAT THE PROPOSED CONTRACTOR'S UNIQUE QUALIFICATIONS OR THE NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED.

(B) DESCRIBE THE EFFORTS TAKEN TO ENSURE OFFERS WERE SOLICITED FROM AS MANY POTENTIAL SOURCES AS IS PRACTICABLE, INCLUDING WHETHER A COMMERCE BUSINESS DAILY (CBD) NOTICE WAS OR WILL BE PUBLISHED AS REQUIRED BY SUBPART 5.2 AND, IF NOT, WHICH EXCEPTION UNDER 5.202 APPLIES.

(C) DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

---

**15. JUSTIFICATION CONTINUED *(Attach additional pages if needed)***

---

(D) DESCRIBE THE MARKET SURVEY THAT WAS CONDUCTED AND THE RESULTS OF THAT SURVEY, IF ACTIONS WERE TAKEN BY PROCUREMENT PERSONNEL TO SATISFY THIS REQUIREMENT SUCH AS A CBD SOURCES SOUGHT SYNOPSIS, PLEASE SPECIFY.

---

(E) DESCRIBE ANY OTHER DOCUMENTATION TO SUPPORT THE JOFOC.

---

(F) LIST SOURCES, IF ANY, THAT EXPRESSED, IN WRITING, AN INTEREST IN THE ACQUISITION.

---

**15. JUSTIFICATION CONTINUED (Attach additional pages if needed)**

(G) LIST THE ACTIONS THE BUREAU WILL TAKE TO PROMOTE COMPETITION ON ANY SUBSEQUENT ACQUISITIONS FOR SIMILAR SUPPLIES OR SERVICES.

(H) STATEMENT THAT REQUIREMENT DOES NOT RESULT FROM A LACK OF PLANNING OR THE EXPIRATION OF FUNDS.

**16. COMPETITION REVIEW BOARD RECOMMENDATION (OPTIONAL)**☐

APPROVE

☐

DISAPPROVE

(Name &amp; Title)

(Signature)

(Phone No.)

(Date)

(Name &amp; Title)

(Signature)

(Phone No.)

(Date)

(Name &amp; Title)

(Signature)

(Phone No.)

(Date)

**ADDITIONAL APPROVALS**

OVER \$500,000	17. BUREAU COMPETITION ADVOCATE (Name & Title)	<input type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature)	(Phone No.) _____ (Date)
OVER \$10 MILLION	18. BUREAU HEAD OR SENIOR EXECUTIVE SERVICE DESIGNEE (Name & Title)	<input type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature)	(Phone No.) _____ (Date)
OVER \$50 MILLION	19. SENIOR PROCUREMENT EXECUTIVE (Name & Title)	<input type="checkbox"/> APPROVE <input type="checkbox"/> DISAPPROVE	(Signature)	(Phone No.) _____ (Date)

NOTE: Each review must be preceded by lower level approval(s), e.g., over \$50 million all approvals are required. IN NO CASE WILL AN INDIVIDUAL SIGN MORE THAN ONE APPROVAL LEVEL



**15. JUSTIFICATION CONTINUED (Attach additional pages if needed)**

(G) LIST THE ACTIONS THE BUREAU WILL TAKE TO PROMOTE COMPETITION ON ANY SUBSEQUENT ACQUISITIONS FOR SIMILAR SUPPLIES OR SERVICES.

(H) STATEMENT THAT REQUIREMENT DOES NOT RESULT FROM A LACK OF PLANNING OR THE EXPIRATION OF FUNDS.

**16. COMPETITION REVIEW BOARD RECOMMENDATION (OPTIONAL)**

☐ **APPROVE**

☐ **DISAPPROVE**

(Name & Title)	(Signature)	(Phone No.)	(Date)
(Name & Title)	(Signature)	(Phone No.)	(Date)
(Name & Title)	(Signature)	(Phone No.)	(Date)

**ADDITIONAL APPROVALS**

OVER \$500,000	17. BUREAU COMPETITION ADVOCATE (Name & Title)	<input type="checkbox"/> <b>APPROVE</b>	(Signature)	(Phone No.)
		<input type="checkbox"/> <b>DISAPPROVE</b>		(Date)
OVER \$10 MILLION	18. BUREAU HEAD OR SENIOR EXECUTIVE SERVICE DESIGNEE (Name & Title)	<input type="checkbox"/> <b>APPROVE</b>	(Signature)	(Phone No.)
		<input type="checkbox"/> <b>DISAPPROVE</b>		(Date)
OVER \$50 MILLION	19. SENIOR PROCUREMENT EXECUTIVE (Name & Title)	<input type="checkbox"/> <b>APPROVE</b>	(Signature)	(Phone No.)
		<input type="checkbox"/> <b>DISAPPROVE</b>		(Date)

NOTE: Each review must be preceded by lower level approval(s), e.g., over \$50 million all approvals are required. IN NO CASE WILL AN INDIVIDUAL SIGN MORE THAN ONE APPROVAL LEVEL.

## INSTRUCTIONS FOR COMPLETING FORM

### Block No.

- 5 Requesting Office Representative
- 6 Small Business Specialist
- 7 Assigned Contracting Officer
- 16 Competition Review Board (optional)
- 17 Bureau Competition Advocate (over \$500,000)
- 18 Bureau Head or Designee (over \$10 Million)
- 19 Senior Procurement Executive (over \$50 Million)

### **GUIDANCE ON COMPLETING CERTAIN BLOCKS**

3 **The cost estimate shall include all options/system life costs (as applicable).**

4 Be sure to include more than one source as a proposed contractor, unless you are citing 41 USC 253(c)(1). For example, if the procurement is based on unusual and compelling urgency, you must still solicit from as many potential sources as is practicable unless the justification for urgency contains detailed documentation to show that it is not practicable under the circumstances to solicit additional sources (see FAR 6.302-2(c)(2)).

### **GENERAL, CERTIFICATION, AND REVIEW REQUIREMENTS**

5 The Requesting Office Representative is responsible for completing Blocks 1 through 5, checking only one block on Page 2 (Blocks 8 through 14), and completing Block 15. Send the JOFOC, complete with all required information to support the justification, to the procurement office.

### **STATUTORY AUTHORITY**

8-14 For Information Technology procurements of specific make and model items, the statutory authority generally will be 41 USC 253(c)(1) only one responsible source. For all procurements, the specific authority shall be cited, and the justification on Pages 3 to 5 must be clear and concise as to how that authority is related to the requested procurement. However, in all cases only one statutory authority is to be used.

### **JUSTIFICATION**

15 Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

- (A) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
- (B) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR 5.202 applies.
- (C) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(D) A description of the market research conducted (see FAR Part 10) and the results or a statement of the reason market research was not conducted.

(E) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When FAR 6.302-1 is cited for a follow-on acquisition as described in FAR 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(F) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(G) A statement of the actions, if any, the agency will take to remove or overcome any barriers to compete before any subsequent acquisition for the supplies or services is required.

(H) A statement that the requirement does not result from a lack of planning or the expiration of funds.

### **OTHER APPROVAL REQUIREMENTS**

16-19 If any person required to sign in these blocks does not approve, the procurement shall not proceed any further and the JOFOC shall be returned to the requisitioner with a written determination as to why the JOFOC was not approved. When appropriate, an informational copy of this determination is to be forwarded to the Contracting Officer and Bureau Competition Advocate. All signatures required on the form (as applicable to the particular procurement) must appear in order for the procurement to be valid.

**NOTE:** ANY SIGNIFICANT CHANGE TO THE REQUIREMENT OR COST ESTIMATE MUST BE APPROVED BY ALL REVIEWERS (THIS CAN BE ACCOMPLISHED BY HAVING EACH PERSON INITIAL AND DATE NEXT TO HIS/HER SIGNATURE, OR BY SEPARATE MEMORANDUM/ADDENDUM).

### **DISTRIBUTION:**

ORIGINAL - CONTRACT FILE  
COPY - BUREAU COMPETITION ADVOCATE

### **Independent Government Cost Estimate Guide**

Detailed cost estimates will occasionally be required by the Contracting Officer, depending upon the circumstances of the particular acquisition. The following step-by-step procedures may be used in developing detailed cost estimates. If the work statement has been written first, several of these steps will already have been accomplished. Please note that this is a simplified example applicable mostly to acquisitions of support services and research and development - other acquisitions, such as construction services, will require a different mix of cost elements.

1. Divide the effort into identifiable tasks or logical steps.
2. List the categories of labor that will be required in each task or step (e.g., clerical, engineer, research scientists). In a "level of effort" acquisition, it is necessary to identify, in as much detail as possible, the categories of expertise desired and the training and experience that will be required for each category. This will yield a more accurate estimate.
3. Estimate the hourly cost of each category of labor.
4. Estimate the total number of hours for each labor category, by task.
5. Multiply the number of hours in each category by the estimate of time required. This will yield the estimated direct labor cost.
6. Estimate the amount and type of materials and supplies that will be required and the cost of each.
7. Identify any other elements of direct cost that the acquisition may require, such as consultant services, computer rentals, etc., and estimate the cost of these.
8. Estimate the travel requirements, if any. Identify the designation, the number of people involved, the length of each trip, and the total cost of this travel in terms of both transportation and per diem.
9. If subcontracting is expected, identify the tasks to be subcontracted and estimate the cost.
10. Estimate the amount of overhead that will be charged.

When all of this information has been collected, a detailed cost estimate can be prepared. The sample format show on the next page may prove helpful.

S A M P L E

INDEPENDENT GOVERNMENT COST ESTIMATE

Direct Labor by Category	No. of Hours	Rate	Total
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
_____	_____ X	_____	_____
TOTAL DIRECT LABOR			_____
DIRECT LABOR OVERHEAD (_____%)			_____
TOTAL LABOR COSTS			_____
Other Direct Costs			
Travel and Per Diem			_____
Consultants (____ days at \$_____/day)			_____
Materials and Subcontracts			_____
TOTAL OF OTHER DIRECT COSTS			_____
FIXED FEE (_____%)			_____
TOTAL (COST PLUS FEE)			_____

**DOs AND DON'Ts FOR COTRs**

**CONTRACT PLANNING**

Do

1. Think about contract administration requirements while writing the work statement or the specifications.
2. Separate discussion of administrative and progress reporting requirements from discussion of required procedures and deliverables when drafting the work statement or specifications

Don't

1. Write vague specifications or work statements, assuming that "the contractor will do whatever is necessary to satisfy the requirement."
2. Ask for progress reports, test samples, or other items from the contractor unless the items are needed for the program or for efficient administration and monitoring.

**PREPARATION FOR CONTRACT ADMINISTRATION**

Do

1. Carefully review the contract, especially the technical requirements.
2. Develop, or obtain from the contractor, a detailed schedule of performance, if one is required by the contract.
3. Work with the contract personnel and the contractor to clear up any misunderstandings and to establish organized contract administration and monitoring procedures.

Don't

1. Assume without reading it that the specification or work statement is complete, clear, and fully understandable.

2. Allow planning to become an end in itself. Remember: the goal is to get results, not just pretty charts showing the “plan.”
3. Forget to update plans and schedules as the situation changes.
4. Overlook or ignore contract requirements for Government-furnished property, timely reviews and approvals, or technical assistance and direction.

## **PROJECT MONITORING**

### Do

1. Set a level of monitoring consistent with the type of contract, the complexity of the supplies or service, and the importance of the contract to the overall program.
2. Read progress reports and immediately act on problems that they reveal.
3. Ensure that the contractor complies with every requirement of the contract.
4. Immediately contact the Contracting Officer when deficiencies or delinquencies are noted.
5. Use the contractor’s invoices to help monitor technical progress.

### Don’t

1. Assume that “no news is good news.”
2. Wait until delivery is due or overdue to check progress.
3. Take action against a delinquent contractor on your own. Work through the Contracting Officer.
4. Order, request, or even suggest that the contractor do work that is not specified in the contract.
5. Act as if you are the contractor’s personnel manager. The COTR should review and approve or disapprove - the contractor supervises contractor personnel.
6. Assume that contractor billings are correct.

## **GENERAL CONTRACT ADMINISTRATION**

### Do

1. Remember that the COTR is an agent of the U.S. Government, with only the authority delegated by the Contracting Officer.
2. Obtain the names of contractor personnel authorized to represent the contractor.
3. Learn the specific authority of contractor personnel. Does the person you are dealing with have the authority to obligate the contractor?
4. See that all Government approvals or consents are provided in a timely manner.

### Don't

1. Accept less than what is required by the contract.
2. Assume an interpretation of ambiguous contract language which would be favorable to the Government. Remember: if the contractor's interpretation is reasonable, it will prevail.
3. Delay payment unless performance is deficient or defective.
4. Accept supplies or services without complete inspection.
5. Make changes, modifications, deletions, or additions to the contract requirements. Work through the Contracting Officer.
6. Automatically consider all contractor claims unreasonable. Be fair and impartial.

## **REMEDIES**

### Do

1. Exercise Government rights, such as warranties. Ensure that any problems are dealt with before the warranty period expires.
2. Work with contracting personnel to prevent problems before they arise.

3. Take actions to protect Government rights before delivery is due.

Don't

1. Act without consulting the Contracting Officer. Work through the contract administration team.
2. Allow interim or final delivery dates to be waived.



## **GLOSSARY OF ACQUISITION AND CONTRACT TERMS**

### **TERM**

### **USAGE**

<b>Acceptance</b>	The act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.
<b>Acquisition</b>	The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.
<b>Administrative Contracting Officer (ACO)</b>	A Government contracting officer, often at an installation other than the one that made the contract, who handles the business administration of the contract. For the larger prime contractors, the ACO is commonly a resident at their facility.
<b>Allocable Costs</b>	Costs that are assignable or chargeable to one or more cost objectives on the contract.
<b>Allocation</b>	Funds made available for departmental subdivisions from the department allocation.
<b>Allotment</b>	Authorization by an agency head to an agency subdivision to incur obligations within a specified amount.
<b>Allowable Costs</b>	Costs that are reasonable, allocable, conform to the standards of the Cost Accounting Board, meet with the terms of the contract, and are pursuant to any limitations specified in FAR 31.2.
<b>Apportionment</b>	Statutory authorization to spend from the Treasury for specified purposes.

<b>Best and Final Offer (BAFO)</b>	The step of a Source Selection process to obtain the best technical and cost proposal as revised following clarification and discussion of the offeror's original proposal, prior to selection of the successful offeror.
<b>Bid</b>	A prospective contractor's (bidder's) offer to an invitation for bids (IFB). Needs only Government acceptance to constitute a binding contract.
<b>Bidders (Mailing) List (Master Bidders List)</b>	List of sources maintained by the procuring office from which bids, proposals or quotations can be solicited.
<b>Blanket Purchase Agreement</b>	A negotiated, unfunded agreement between a contractor and the Government under which individual "calls" may be placed for a specified period of time and within a stipulated amount.
<b>Change Order</b>	Unilateral direction to a contractor to modify a contractual requirement within the scope of the contract, pursuant to the Changes clause contained in the contract.
<b>Claim</b>	A written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.
<b>Commerce Business Daily (CBD)</b>	Publication synthesizing proposed Government acquisitions, requests for information, and contract awards. Also publishes information on subcontracting opportunities and advance notices of acquisitions.

<b>Commercial Item</b>	<p>Any item excluding real property that is customarily used for nongovernmental purposes that has been sold or offered for sale to the general public; any of these items that can be modified to meet the Government's requirement, or have evolved through advances in technology or performance that is not yet available but will be available in the commercial marketplace in time to fulfill the Government's requirements.</p> <p>Services procured to support any above item such as installation, maintenance, repair, and training; services offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services sold based on hourly rates without established prices for a specific service performed.</p>
<b>Commitment</b>	A firm administrative reservation of funds authorizing subsidiary activities to start action leading to an acquisition obligation.
<b>Competitive Proposal</b>	Technical and Cost Proposals for negotiated acquisitions as cited in Title VII - Competition in Contracting Act of 1984.
<b>Competitive Range</b>	A range established by the Contracting Officer in Source Selection for proposals having a reasonable chance of being selected for award.
<b>Comptroller General</b>	Head of the General Accounting Office appointed by the President (and confirmed by the Senate) for a 15-year term.
<b>Contract</b>	A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of award; job orders or task letters issued under basic ordering agreements; letter contracts, purchase orders; and bilateral contract modifications. Contracts do not include grants and cooperative agreements.

<b>Contracting</b>	Sometimes referred to as procurement, means purchasing, renting, leasing or otherwise obtaining supplies or services. Includes description (but not determination) of supplies and services required, solicitation of sources, preparation and award of contracts, and all phases of contract administration.
<b>Contract Type</b>	A reference to the pricing terms of the agreement between a buyer and a seller; may refer to the special nature of other important terms in the agreement. The following are some examples:
<b>-- Basic Ordering Agreement</b>	A written instrument of understanding (not a legally enforceable contract per se) between a contractor and the Government. Sets forth the contract clauses applicable to future acquisitions entered into between the parties during the terms of the basic agreement. Used to eliminate extensive and costly negotiation when a substantial number of separate contracts may be entered into with a contractor over a definite period of time.
<b>-- Cost Reimbursement Contracts</b>	In general, a category of contracts whose use is based on payment by the Government to a contractor of allowable costs as prescribed by the contract. Normally, only "best efforts" of the contractor are involved. Includes (i) cost, (ii) cost-sharing, (iii) cost-plus-fixed-fee and (iv) cost-plus-incentive-fee, (v) cost-plus-award fee contracts.
<b>-- Fixed-Price Contracts</b>	In general, a category of contracts whose use is based on the establishment of a firm price or in appropriate cases, adjusted prices. Includes (i) firm-fixed-price, (ii) fixed-price with economic price adjustment, (iii) fixed-price redeterminable, and (iv) fixed-price incentive contracts.
<b>-- Indefinite Delivery/Indefinite Quantity</b>	Used when the precise quantity of items or specific time of delivery desired is not known. Usually will specify a maximum and/or minimum quantity. Such acquisition is effected via (i) a definite quantity contract, (ii) a requirements contract, or (iii) an indefinite quantity contract. May be either negotiated or sealed bid.
<b>-- Letter Contract</b>	A written preliminary contractual instrument that authorizes the contractor to begin manufacturing supplies or performing services. Used in negotiated acquisitions only when a definitized fixed-price or cost-reimbursement contract cannot be written until a later date.

<b>-- Time and Materials/Labor Hour Contracts</b>	Negotiated contracts based on specified fixed hourly rates and materials at cost to complete a given task. Used only in situations where it is not possible at the outset to estimate the extent or duration of the work involved or to anticipate cost with any substantial accuracy.
<b>Data</b>	All recorded information to be delivered under a contract. "Technical data" exclude management and financial data.
<b>Delivery Order</b>	Order for supplies placed against an established contract or with Government sources of supply.
<b>Determination and Findings (D&amp;F)</b>	Written justification by a Contracting Officer or higher authority for such things as: (i) entering into contracts by negotiation, (ii) making advance payments in negotiated acquisitions, (iii) determining the type of contract to use.
<b>Dispute</b>	A disagreement between parties concerning interpretation of payment, time, or money due either party.
<b>Economic Price Adjustment</b>	Contract clauses applicable to Fixed-price with economic price adjustment contracts that provide for resetting the contract price when a contingency, such as a change in cost of labor or materials occurs.
<b>Extras</b>	Additions to items being purchased, or any quantity above that called for by the contract (besides allowable variation in quantity), or any combination of these two. Extras and the price thereof may only be authorized by the Contracting Officer.
<b>Federal Acquisition Regulation (FAR)</b>	The primary regulation for use by all Federal Executive agencies in the acquisition of supplies and services with appropriated funds.
<b>Incremental Funding</b>	The obligation of funds to a contract (which contains a total price or estimated cost) in periodic installments as work progresses, rather than in a lump sum.
<b>Inspection</b>	Examining and testing supplies or services to determine whether they conform to contract requirements.
<b>Invitation for Bids (IFB)</b>	A solicitation document used in sealed bidding acquisitions and in Two-Step Sealed Bidding).

<b>Latent Defect</b>	A defect that exists at the time of the Government's acceptance, but cannot be detected by reasonable inspection.
<b>List of Parties Excluded from Federal Procurement and Non-procurement Programs</b>	A list of contractors who, for various reasons, are debarred, proposed for debarment, suspended, or otherwise determined ineligible, or voluntarily excluded from award of Government contracts.
<b>Material</b>	Anything incorporated into, or consumed in, the manufacture of an end item. Includes raw and processed material, parts, components, assemblies and usable tools.
<b>Modification</b>	Any written change in the terms of a contract.
<b>Negotiation</b>	Contracting through the use of either competitive or other than competitive proposals and discussions.
<b>Nondevelopmental Item</b>	Any previously developed item of supply used exclusively for Governmental purposes, or any such item that requires only minor modification or modification of a type customarily available in the commercial marketplace.
<b>Obligation</b>	A monetary liability of the Government limited in amount of the legal liability of the Government at the time of recording. Must be supported by documentary evidence of the transaction involved.
<b>Offer, Proposal, Quotation</b>	A prospective contractor's response to a solicitation document that, if accepted, would bind the offeror to perform the resultant contract. Responses to IFBs are called "bids"; responses to RFPs are called "proposals"; responses to RFQs are called "quotations" and do not constitute an offer. (Also see definition <b>Request for Quotations</b> )
<b>Office of Management and Budget</b>	Basic financial control agency in the executive branch. Reports directly to the President.

<b>Option</b>	The unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.
<b>Personal Services</b>	Services provided by contractor employees, the performance of which creates an employer-employee relationship between the Government and contractor personnel.
<b>Preaward Survey</b>	Study of a prospective contractor's financial, organizational and operational capability, and managerial status, made prior to contract award, to determine responsibility and eligibility for Government acquisition.
<b>Pre-bid Conference</b>	In sealed bid acquisitions, a meeting of prospective bidders arranged by the Contracting Officer during the solicitation period to help solicited firms fully understand the Government's requirement and to give them an opportunity to ask questions.
<b>Pre-proposal Conference</b>	A meeting held to brief prospective offerors after the solicitation has been issued but before offers are submitted.
<b>Presolicitation Conference</b>	A meeting held with potential contractors prior to release of an RFP, to discuss technical and other problems connected with a proposed acquisition. The conference is also used to elicit the interest of prospective contractors in pursuing the task.
<b>Price and Fee</b>	
<b>-- Ceiling Price</b>	The negotiated monetary limit - in a fixed-price-type contract - to the amount that the Government is obligated to pay. Costs incurred beyond this point must be absorbed by the contractor.
<b>-- Fee</b>	An amount, in addition to allowable costs, paid to contractors having CPFF, CPAF, or CPIF contracts. In CPFF contracts, the fee is fixed as a percentage (stated in dollar amount) of the initially estimated cost of the acquisition.
<b>Privity of Contract</b>	The relationship which exists between two contracting parties, e.g., the prime contractor and the Government.

<b>Progress Payments</b>	Payments made to the prime contractor during the life of a fixed-price-type contract on the basis of a percentage of the total incurred cost or total direct labor and material cost.
<b>Purchase Order</b>	A contractual acquisition document used primarily to purchase supplies and nonpersonal services using simplified acquisition procedures described in FAR Part 13.
<b>Purchase Request (PR)</b>	A document that describes the required supplies or services and serves as a notice of funds committed so that an acquisition can be initiated. Some activities actually refer to the document by this title; others use different titles, such as Purchase Directive, etc.
<b>Qualified Products List (QPL)</b>	A list of products that have been examined, tested, and have satisfied all applicable qualification requirements.
<b>Redetermination</b>	A procedure agreed upon prior to the award of a fixed-price contract. Specifies the method of repricing to be used at a time (or times) during the life of the contract when enough cost information is available to set a reasonable price.
<b>Request for Proposals (RFP)</b>	<p>A solicitation document used in negotiated acquisition to communicate Government requirements to prospective contractors and to solicit proposals from them.</p> <p>A proposal received in response to an RFP is an offer that can be accepted by the Government to create a binding contract, either following discussions or when authorized, without discussion.</p>
<b>Request for Quotations (RFQ)</b>	<p>A solicitation document generally used in simplified acquisitions to communicate Government requirements to prospective contractors and to solicit quotations from them.</p> <p>A quotation received in response to an RFQ is not an offer and cannot be accepted to create a binding contract. It is informational in character.</p>
<b>Request for Technical Proposals (RTP)</b>	Solicitation documents used in two-step sealed bidding. Normally in letter form, it asks only for technical information; price and cost breakdowns are forbidden.
<b>Requiring Activity</b>	Any activity originating a request for supplies or services.



<b>Sealed Bidding</b>	See Bid
<b>Simplified Acquisitions</b>	Purchases of supplies or services less than \$100,000, using simplified procedures described in FAR Part 13. Simplified acquisitions include: purchase card buys, purchase orders, electronic purchasing, task and delivery orders against established contracts, imprest fund buys, and blanket purchase agreements.
<b>Small and Disadvantaged Business Utilization Specialist</b>	A Government employee who has responsibility for implementing small business programs.
<b>Small Business Administration (SBA)</b>	A Federal agency created to foster and protect the interests of small business concerns.
<b>Special Tooling</b>	All molds, dies, jigs, fixtures, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacements thereof, acquired or manufactured by the contractor for use in the performance of a Government contract. Must be of such a specialized nature that without substantial modification or alteration, its use is limited to production peculiar to Government needs.
<b>Subcontract</b>	A contract between a buyer (a prime contractor or higher tier subcontractor) and a seller. The term frequently implies a substantial dollar value and/or nonstandard specifications.
<b>Supplemental Agreement</b>	Bilateral written modification to a contract by which the Government and the contractor settle price and/or performance adjustments to the basic contract.
<b>Task Order</b>	Order for services placed against an established contract or with Government sources of supply.
<b>Termination</b>	The canceling of all or a part of a prime contract or a subcontract prior to its completion through performance. May be for the convenience of the Government, for default of the contractor due to nonperformance, or in CI acquisitions, for cause or convenience.

**Two-Step Sealed Bidding**

A type of sealed bid acquisition. Step one is the receipt and evaluation of technical proposals (see RTP) to select those contractors whose proposals are acceptable. Only these contractors may then bid in step two, which proceeds the same as sealed bidding.

**Unsolicited Proposal**

A written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the government and which is not in response to a formal or informal request. A valid unsolicited proposal must be innovative, unique, and be independently originated and developed by the offeror.

**Value Engineering**

An organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

**Work Statement  
(Statement of Work  
- SOW)**

Although varying widely in precise definition, the term generally covers that portion of a contract that describes the actual work (services) to be done by means of minimum requirements, performance dates, and a statement of requisite quality.